

***United States Court of Appeals  
for the  
District of Columbia Circuit***



**TRANSCRIPT OF  
RECORD**



881

CONSOLIDATED APPENDIX

IN THE  
**United States Court of Appeals**

FOR THE DISTRICT OF COLUMBIA CIRCUIT

**Nos. 20861, 20862, 20863**

**TROY V. POST, JR., *Appellant***

**v.**

**UNITED STATES OF AMERICA**

United States Court of Appeals  
for the District of Columbia Circuit

**BILL M. ALLEN, *Appellant***

**v.**

**UNITED STATES OF AMERICA**

OCT 16 1967

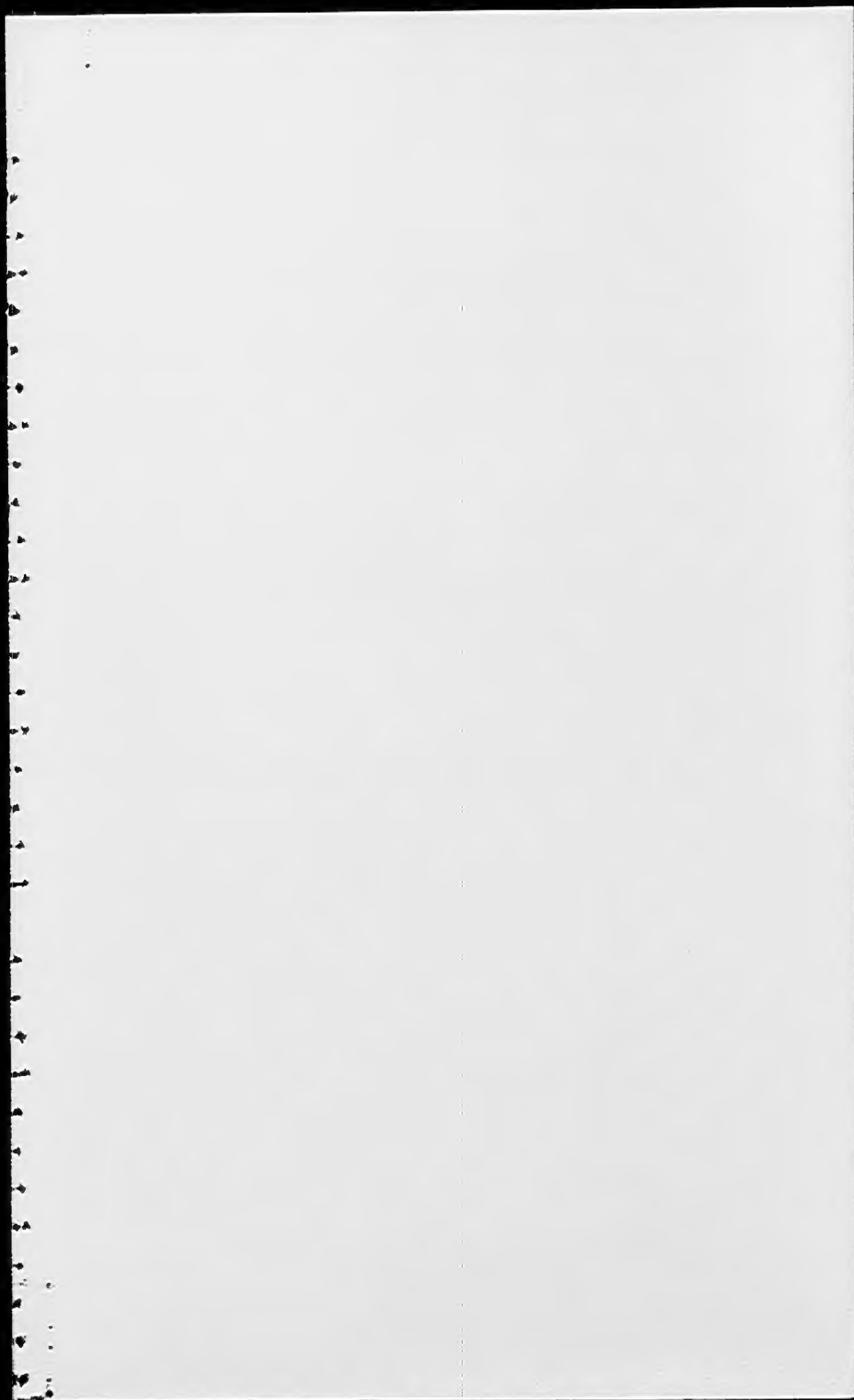
*Nathan J. Paulson*  
CLERK

**LEROY W. PICKETT, *Appellant***

**v.**

**UNITED STATES OF AMERICA**

**Consolidated Appeals From Judgments of the United States  
District Court for the District of Columbia**





## INDEX

	Page
Indictment .....	2-22
Motion To Dismiss Indictment .....	23-24
Memorandum of Points and Authorities in Support of Motion To Dismiss .....	25-29
Defendant Leroy W. Pickett's Supplemental Memo- randum in Support of Motion To Dismiss ....	30-31
TESTIMONY:	
Alexander J. Greene .....	32-48
Benjamin Field .....	48-52
Robert Walter Vranich .....	52-55
Paul V. Rogers .....	55-
John H. Pardee .....	56-57
Jack L. Harvey .....	57-61
James F. Crowley .....	61-62
Paul Herbert Hockwalt .....	62
Harry A. Calevas .....	62-63
William H. Reckert .....	63-64
Lee Maxfield .....	64-65
F. Ruskin Winthrop .....	65-
James L. Nalle .....	66-67
Sam Seeley .....	68
Walter C. P. Rutland .....	68
Henry George .....	68
Frank Quiggin .....	69-70
Harold A. Timken .....	70-79
M. L. Parker .....	79-80
Henry Ator .....	80-81
Robert Elder .....	81-84
Eugene Hooper .....	84-85
Maury Fitzgerald .....	85
Dorothy O'Neil .....	85-86
Thomas Graham Peters .....	87
Walter Shultise .....	87-90
William A. Hepburn .....	90-100
Joseph P. Kost .....	100

	Page
Jinx Dobbins .....	100-101
Roy Luttrell Leinster .....	101
Frank C. Feise .....	101-104
Donald Brimmer .....	104-110
Eugene Hooper .....	110-111
Troy V. Post, Jr. ....	111-181
Chester Wayne Freeland, Jr. ....	181-193
Robert W. Brownell .....	194-197
Marvin Simmons .....	197-198
Clark T. Harmon .....	198-211
Edmund B. Ault .....	211-221
Garland Gerald Nixon .....	221-237
Proffer in Behalf of the Defendant Pickett .....	237-239
Billy M. Allen .....	240-261
Leroy W. Pickett .....	261-268
Discussion Between Court and Counsel Regarding So-Called Promoter Instruction .....	268-285
Portion of Government's Final Argument to Jury by Marvin Loewy .....	285-289
Defense Counsels' Objection to Government Final Argument .....	289-290
Portion of Court's Charge to Jury on So-Called Promoter Instruction .....	290-291
Jury's Request for Additional Reading of Full Charge; Note From Jury Stating They Are Deadlocked; Giving of Allen Charge and Ob- jections by All Counsel for Defense .....	290-291
Sentencing .....	304-307
 EXHIBITS:	
Release Agreement Between Appellants and Lake- wood Management Corporation, et al., Defend- ants' Exhibit 30 .....	307-311
Government's Exhibit 183, Schedules A, A-1, A-2, A-3 and A-4 .....	312-314
Appendix to the Appellant's Post-Trial Motion, a Compilation of Witnesses' Testimony Showing Inability To Recall .....	314-352

IN THE  
**United States Court of Appeals**

FOR THE DISTRICT OF COLUMBIA CIRCUIT

---

Nos. 20861, 20862, 20863

---

TROY V. POST, JR., *Appellant*  
v.  
UNITED STATES OF AMERICA

---

BILL M. ALLEN, *Appellant*  
v.  
UNITED STATES OF AMERICA

---

LEROY W. PICKETT, *Appellant*  
v.  
UNITED STATES OF AMERICA

---

Consolidated Appeals From Judgments of the United States  
District Court for the District of Columbia

---

CONSOLIDATED APPENDIX

---

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Holding a Criminal Term  
Special Grand Jury Impanelled February 27, 1964;  
Sworn on March 3, 1964  
Criminal No. 580-'64  
Grand Jury No.—Original Violations:  
18 U.S.C. 371, 1341

UNITED STATES OF AMERICA

v.

TROY V. POST, JR., BILL M. ALLEN, AND LEROY W. PICKETT,  
*Defendants.*

*THE GRAND JURY CHARGES:*

COUNT 1

1. That from on or about the 1st day of November 1958, and continuously from that date to the date of the finding of this indictment, and within the District of Columbia, the defendants Troy V. Post, Jr., Bill M. Allen, and Leroy W. Pickett did conspire and agree together and each with the other, with divers other persons to the Grand Jury unknown, and with Lakewood Country Club, Inc., a body corporate, Lakewood Management Corporation, a body corporate, PAP, Inc., a body corporate, and Country Club Developers, Inc., a body corporate, which corporations are named herein only as co-conspirators and not as defendants, to commit offenses against the United States in violation of Sections 1341 and 1343 of Title 18, United States Code, that is to say, to use the mails, and cause the use of the mails, and to take and receive from the Post Office Department letters, post cards and communications, in furtherance and execution of a scheme and artifice to defraud and for obtaining money and property from:

Frank J. Toman; Sam F. Seeley; Harry A. Calevas; Mr. and Mrs. Frank W. Quiggin; Mr. and Mrs. Arthur Garis; Dr. and Mrs. Ernest A. Gould; Mr. and Mrs. Lee Mansfield; Henry L. George; Rev. Thomas M. Duffy; Walter C. P. Rutland; Mr. and Mrs. James B. Nalle; Barend A. deVries; William H. Reckert; G. Earl Mantz; Henry Ator; Alan L. Winthrop, and such other persons who could and would be induced by the said defendants to purchase memberships in Lakewood Country Club, Inc., by means of false and fraudulent pretenses, representations, and promises, well knowing at the time that the pretenses, representations, and promises would be false when made, and to transmit and cause to be transmitted by means of wire and radio communications in interstate commerce, signals and sounds in furtherance and execution of a scheme and artifice to defraud and for obtaining money and property from the aforesaid persons and others who could and would be induced by the said defendants to purchase memberships in Lakewood Country Club, Inc., by means of false and fraudulent pretenses, representations and promises, well knowing at the time that the pretenses, representations and promises would be false when made,

2. That it was part of said conspiracy that the defendants herein named would devise and intend to devise the following scheme and artifice to defraud and would obtain money and property from the aforesaid persons and others who could and would be induced by the said defendants to purchase memberships in Lakewood Country Club, Inc., by means of the following false and fraudulent pretenses, representations, and promises, which the said defendants would well know at the time that the pretenses, representations and promises would be false when made, and for the purpose of executing such scheme and artifice to defraud would use the mails and cause the mails to be used, and would also transmit and cause to be transmitted by means of wire and radio communication in interstate



commerce signals and sounds in furtherance and execution of this scheme and artifice to defraud namely:

(1) The defendants named herein on or about July 10, 1959, would cause to be incorporated a corporation known as Lakewood Country Club, Inc., under the laws of the State of Maryland as a non-profit membership corporation.

(2) That the defendants named herein would select three persons of their acquaintance as alleged members of said Lakewood Country Club, Inc., who would pay no membership fees or dues, and would appoint said persons as a puppet and dummy Board of Directors and as puppet and dummy officers of said corporation.

(3) That on or about July 10, 1959, the defendants named herein would form and incorporate Lakewood Management Corporation under the laws of the State of Maryland in which corporation the defendants named herein would be the sole stockholders, directors, and officers.

(4) That on or about July 10, 1959, the defendants named herein would form and incorporate under the laws of the State of Maryland PAP, Inc., in which the defendants named herein would be the sole stockholders, directors, and officers.

(5) That the defendants named herein acting as directors and officers of the Lakewood Management Corporation, on or about July 11, 1959, would enter into an alleged agreement with Lakewood Country Club, Inc., whereby Lakewood Management Corporation would, among other things, fully manage, direct, and operate the country club facilities of Lakewood Country Club, Inc., and wherein Lakewood Management Corporation would have sole discretion to establish minimum spending requirements for members of the country club, and would have authority to draw checks on back accounts of Lakewood Country Club, Inc., which said agreement the defendants named herein would have the puppet, dummy, and alleged members and

officers of Lakewood Country Club, Inc., sign on behalf of that corporation.

(6) That on or about September 1, 1959, the defendants named herein acting as directors and officers of PAP, Inc., would enter into an agreement with Glen Hills Club Estates, Inc., whereby the latter would lease to PAP, Inc., land and property on which the country club facilities would allegedly be situated, beginning September 1, 1959, for a term of 50 years at a rental of \$15,000 for the first year and with an option to buy.

(7) That the defendants named herein, acting as directors and officers of PAP, Inc., would enter into an agreement on September 1, 1959, whereby PAP, Inc., would lease to Lakewood Country Club, Inc., the same land and property referred to above in subparagraph (6) for a term of three (3) years, beginning September 1, 1959, at a yearly rental of \$60,000, and without an option to buy, which said agreement the defendants named herein would have the aforesaid puppet and dummy members and officers of Lakewood Country Club, Inc., sign on behalf of that corporation.

(8) That on or about June 9, 1959, the defendants named herein, together with Lakewood Country Club, Inc., and Lakewood Management Corporation, would enter into an agreement with C. Wayne Freeland and James E. Hayes, whereby in exchange for alleged advisory service the said defendants and aforesaid co-conspirators would be jointly bound to pay to the said C. Wayne Freeland and James E. Hayes ten percent (10%) of the selling price of each membership sold in the Lakewood Country Club, Inc., and \$1.00 per month per dues paying member or eight and one-half percent (8½%) of the dues paid by a member whichever is greater, which said agreement the said defendants would have signed on behalf of Lakewood Country Club, Inc., by the aforesaid puppet and dummy member and President of that corporation.



(9) That on or about August 26, 1959, the defendants named herein would cause to be formed and incorporated under the laws of the District of Columbia a body corporate known as Country Club Developers, Inc., in which the said defendants would be the sole stockholders, directors, and officers.

(10) That on or about December 29, 1959, the defendants named herein would cause an alleged agreement to be made between Country Club Developers, Inc., and Lakewood Country Club, Inc., for the construction of a club house and bath house for \$625,000, which said agreement would be signed by C. Wayne Freeland as alleged agent for Country Club Developers, Inc., and by the defendant Troy V. Post, Jr., as alleged manager for Lakewood Country Club, Inc.

(11) That on or about March 28, 1960, the defendants named herein would cause Country Club Developers, Inc., to enter into an agreement with E. N. Hooper Construction Co., Inc., for the construction of a club house and bath house for Lakewood Country Club, Inc., at a contract price of \$542,969.

(12) That on or about April 15, 1960, the defendants named herein would cause to be prepared a corporate resolution of the Lakewood Country Club, Inc., authorizing a minimum spending requirement of \$25.00 per month for each member of the club, and would cause the same to be inserted into corporate minutes of a meeting of the puppet and dummy Board of Directors which would be and was never held.

(13) That none of the corporations named herein as co-conspirators, namely, Lakewood Management Corporation, PAP, Inc., and Country Club Developers, Inc., would have any income, except such moneys as would be received in payment of membership fees and dues for membership in Lakewood Country Club, Inc.

(14) That all moneys paid for memberships in Lakewood Country Club, Inc., would be deposited in bank accounts in the name of Lakewood Country Club, Inc., on which only the defendants named herein, who would be neither members, directors, or officers of Lakewood Country Club, Inc., would draw checks on such bank accounts without *any authority therefor*.

(15) That the defendants named herein, in order to induce the aforesaid persons and others who could and would be induced by them to purchase memberships in the Lakewood Country Club, Inc., would make the following false and fraudulent pretenses, representations, and promises, well knowing at the time that the same would be and were false when made:

(a) The defendants named herein would cause advertisements to be published in The Washington Post, The Evening Star, and The Washington Daily News, newspaper publications in the District of Columbia, which falsely and fraudulently represent in the tenor following that "a specially limited number of life memberships (non-dues paying)" would be available and that there would be "no assessments—ever," and which advertisements would invite such persons aforesaid and others to request further information by telephone and by mail.

(b) The defendants named herein would falsely pretend and represent to the aforesaid persons and others who could and would be induced by them to purchase such memberships in Lakewood Country Club, Inc., in letters transmitted and caused to be transmitted by said defendants through the United States mails and in the aforesaid newspaper advertisements that prominent and outstanding citizens of the community to be named in such letters and advertisements would be members of a so-called and alleged advisory board and that such citizens would be and were endorsing and would be financially interested in and financially supporting said Lakewood Country Club,

Inc., and would be and were directing the policies of Lakewood Country Club, Inc., and would be and were giving their advice in connection with the policies and with the operation of its affairs.

(c) The defendants named herein would falsely pretend and represent to the aforesaid persons and others who could and would be induced by them to purchase memberships in Lakewood Country Club, Inc., that they, the defendants, together with C. Wayne Freeland and James E. Hayes, and other persons in the State of Texas, had invested, and would be and were investing their money to set up and establish Lakewood Country Club, Inc., and would be and were financially supporting and backing said Lakewood Country Club, Inc., against failure.

(d) The defendants named herein would at some times falsely pretend and represent to the aforesaid persons and others who could and would be inducted by them to purchase memberships in Lakewood Country Club, Inc., that the total membership would not exceed 1500 members and would have no more than 150 non-dues paying life members, and at other times would falsely pretend and represent to such persons that the total membership would be less than 2000 members and that there would be no more than 300 non-dues paying life members.

(e) The defendants named herein would falsely pretend and represent to the aforesaid persons and others who could and would be induced by them to purchase memberships in Lakewood Country Club, Inc., that there would be and were no minimum spending requirements for members.

(16) That the moneys received as fees for memberships in the Lakewood Country Club, Inc., and coming into the possession, custody, and control of the defendants named herein would be converted to and for their own use and benefit, and would be converted and diverted as alleged

loans to companies and corporations owned and controlled by them and having no connection or relation to Lakewood Country Club, Inc., and would be converted by them in the form of alleged salaries to themselves as officers of PAP, Inc., and Country Club Developers, Inc., and would be converted by them as alleged fees and commissions to themselves for alleged services, and would be converted by them to Country Club Developers, Inc.

(17) That on or about December 29, 1959, the defendants named herein would cause an alleged agreement to be entered into between Lakewood Country Club, Inc., and Country Club Developers, Inc., whereby Lakewood Country Club, Inc., would deposit with the nominee of Country Club Developers, Inc., namely, the defendant Troy V. Post, Jr., the sum of \$100,000, which said alleged agreement would be signed on behalf of Lakewood Country Club, Inc., by an alleged manager, namely, the defendant Troy V. Post, Jr., and on behalf of Country Club Developers, Inc., by the defendant Leroy W. Pickett.

(18) That on or about December 29, 1959, the defendants Bill M. Allen and Troy V. Post, Jr., would issue a check pursuant to said alleged agreement in the amount of \$100,000, payable to the defendant Troy V. Post, Jr., and drawn on the bank account of Lakewood Country Club, Inc., which the defendant Troy V. Post, Jr., would deposit in his name in a bank account identified as client account.

(19) That the defendant Troy V. Post, Jr., would disburse the aforesaid \$100,000 for purposes other than the purposes set forth in the aforesaid agreement.

(20) That the defendants named herein, for the purpose of misleading and with the intent to lull into a false sense of security members and such persons aforesaid and others who could and would be induced by them to purchase memberships in Lakewood Country Club, Inc., would not disclose and would conceal that:

(a) The directors and officers of Lakewood Country Club, Inc., were puppet and dummy members, officers, and directors, and were not bona fide members of said corporation, were not bona fide directors and officers of said corporation and were persons who had been selected, nominated and elected by the defendants named herein.

(b) There was in existence corporate entities identified as Lakewood Management Corporation, PAP, Inc., and Country Club Developers, Inc., in which the defendants named herein were the sole stockholders, officers, and directors.

(c) The sole income of PAP, Inc., and Country Club Developers, Inc., would be and was derived from the membership fees paid into Lakewood Country Club, Inc.

(d) The defendants named herein had the puppet and dummy officers of Lakewood Country Club, Inc., sign an alleged agreement on or about July 11, 1959, with Lakewood Management Corporation, whereby this latter corporation would, among other things, fully manage, direct, and operate the country club facilities, and would have sole discretion to establish minimum spending requirements for club members, and would have authority to draw checks on bank accounts of Lakewood Country Club, Inc.

(e) The defendants herein, acting as officers of PAP, Inc., had entered into an agreement on September 1, 1959, whereby said corporation leased the land and property, on which the country club facilities would be situated, for a term of 50 years at a rental of \$15,000 for the first year and with an option to buy.

(f) The defendants named herein had caused the puppet and dummy officers of Lakewood Country Club, Inc., on September 1, 1959, to enter into an agreement with them acting as officers of and on behalf of PAP, Inc., for the rental of the land and property on which the country club facili-

ties would be situated for a term of 3 years at a yearly rental of \$60,000 and without any option to buy.

(g) The defendants named herein, together with Lakewood Country Club, Inc., and Lakewood Management Corporation, had entered into an agreement on June 9, 1959, with C. Wayne Freeland and James E. Hayes, whereby the said defendants and aforesaid co-conspirators would be jointly bound to pay to C. Wayne Freeland and James E. Hayes ten percent (10%) of the selling price of each membership sold in Lakewood Country Club, Inc., and \$1.00 per month per dues paying member or eight and one-half percent (8½%) of the dues paid by a member which ever is greater for alleged advisory service, which said agreement the said defendants had caused the puppet and dummy President of Lakewood Country Club, Inc., to sign on behalf of that corporation.

(h) The defendants herein on or about April 15, 1960, had caused a corporate resolution of Lakewood Country Club, Inc., to be prepared, authorizing a minimum spending requirement of \$25.00 per month for each member of the club, and had caused the same to be inserted into corporate minutes of a meeting of the puppet and dummy Board of Directors which was never held.

(i) The defendants herein had caused an alleged agreement to be made on or about December 29, 1959, between Country Club Developers, Inc., and Lakewood Country Club, Inc., for the construction of a club house and bath house for \$625,000, which had been signed by C. Wayne Freeland, as alleged agent for Country Club Developers, Inc., and by the defendant Troy V. Post, Jr., as alleged manager for Lakewood Country Club, Inc.

(j) None of the corporations named herein as co-conspirators had any income, except moneys received in payment of membership fees for memberships in Lakewood Country Club, Inc.

(k) The moneys paid for memberships in Lakewood Country Club, Inc., would be and were deposited in bank accounts in the name of Lakewood Country Club, Inc., on which said accounts only the defendants named herein, who were neither members, directors, or officers of Lakewood Country Club, Inc., could draw checks.

(1) The moneys received as fees for memberships in the Lakewood Country Club, Inc., would be and were being converted by the defendants named herein to their own use and benefit, and would be and were being converted and diverted as alleged loans to companies and corporations owned and controlled by them and having no connection or relation to Lakewood Country Club, Inc., and would be and were being converted by them in the form of alleged salaries to themselves as officers of PAP, Inc., and Country Club Developers, Inc., and would be and were being converted by them as alleged fees and commissions to themselves for alleged services, and would be and were being converted by them to Country Club Developers, Inc.

(m) The defendants named herein would and had withdrawn \$100,000 of the moneys of Lakewood Country Club, Inc., which would be and was deposited to a bank account in the name of the defendant Troy V. Post, Jr., and that said moneys would be and were withdrawn by the said defendant for purposes and uses other than those of Lakewood Country Club, Inc.

(n) The defendants named herein would pay and had paid to C. Wayne Freeland and James E. Hayes ten percent (10%), of each of the membership fees paid into Lakewood Country Club, Inc., for alleged advisory service and would pay them \$1.00 per month per dues paying member or eight and one-half percent (8½%) of the dues paid by a member whichever is greater.



## OVERT ACTS

In furtherance of the aforesaid conspiracy and in order to effect the objects thereof, the defendants named herein did commit, among others, the following overt acts:

1. On or about July 10, 1959, within the District of Columbia the defendant Troy V. Post, Jr., arranged and contracted with C. T. Corporation System for the incorporation of the Lakewood Country Club, Inc., Lakewood Management Corporation, and PAP, Inc.

2. On or about August 26, 1959, within the District of Columbia, the defendant Troy V. Post, Jr., arranged and contracted with C. T. Corporation System for the incorporation of Country Club Developers, Inc.

3. On or about June or July 1959, within the District of Columbia the defendants Troy V. Post, Jr., Bill M. Allen, and Leroy W. Pickett met with Robert W. Vranich, Jr., Paul V. Rogers, and Robert A. Bock.

4. On or about July 27, 1959, within the District of Columbia the defendant Troy V. Post, Jr., opened a bank account at the Union Trust Company.

5. On or about July 31, 1959, within the District of Columbia the defendant Bill M. Allen had a meeting with Benjamin Feld.

6. On or about November 3, 1959, within the District of Columbia the defendant Troy V. Post, Jr., opened a bank account at the Union Trust Company.

7. On or about November 19, 1959, within the District of Columbia the defendant Bill M. Allen had a meeting with Arthur Garis.

8. On or about April 25, 1960, within the District of Columbia the defendant Troy V. Post, Jr., leased an automobile from Royal Auto Leasing, Inc.

9. On or about May 1960, within the District of Columbia the defendants Troy V. Post, Jr., Bill M. Allen, and Leroy W. Pickett employed Carol S. Kershner.

10. On or about August 29, 1960, within the District of Columbia the defendant Troy V. Post, Jr., had a conversation with A. Perry Hall.

11. On or about September 23, 1960, within the District of Columbia the defendant Leroy W. Pickett sent a letter to The Evening Star newspaper.

In violation of 18 United States Code 371.

#### COUNT 2

1. Beginning on or about the 1st day of November 1958, and continuing to on or about the 31st day of March 1962, the defendants Troy V. Post, Jr., Bill M. Allen, and Leroy W. Pickett devised and intended to devise a scheme and artifice to defraud and to obtain money by means of false and fraudulent pretenses, representations, and promises from those people named in paragraph 1 of Count 1 of this indictment, which names are incorporated by reference in this count, and from such other persons who could and would be induced by the defendants named herein to purchase memberships in Lakewood Country Club, Inc., well knowing at the time that the pretenses, representations, and promises would be and were false when made, and which scheme and artifice to defraud and to obtain money by means of false and fraudulent pretenses, representations, and promises, so devised and intended to be devised by the said defendants, are described and set forth in substance in the allegations of paragraphs 2 through 2(20)(n) of Count 1 of this indictment, which allegations pertaining to the same are incorporated by reference in this count.

2. On or about October 19, 1959, for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so, the defendants named herein knowingly

caused to be delivered by the United States mails within the District of Columbia a letter addressed to Frank J. Toman, 7600-16th Street, N.W., Washington, D.C.

In violation of 18 United States Code 1341.

### COUNT 3

1. The Grand Jury realleges all of the allegations of paragraph 1 of Count 2 of this indictment, including all those incorporated by reference.

2. On or about October 19, 1959, for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so, the defendants named herein within the District of Columbia wilfully caused to be placed in an authorized depository for mail a check enclosed in an envelope, addressed to the Lakewood Country Club, Inc., from Sam F. Seeley, 7206 Alaska Avenue, Washington, D.C., to be sent and delivered by the Post Office Department of the United States.

In violation of 18 United States Code 1341.

### COUNT 4

1. The Grand Jury realleges all of the allegations of paragraph 1 of Count 2 of this indictment, including all those incorporated by reference.

2. On or about October 19, 1959, for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so, the defendants named herein within the District of Columbia wilfully caused to be placed in an authorized depository for mail a letter and check addressed to the Lakewood Country Club, Inc., from Harry A. Calevas 821-15th Street N.W., Washington, D.C. to be sent and delivered by the Post Office Department of the United States.

In violation of 18 United States Code 1341.

## COUNT 5

1. The Grand Jury realleges all of the allegations of paragraph 1 of Count 2 of this indictment, including all those incorporated by reference.

2. On or about November 6, 1959, for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so, the defendants named herein knowingly caused to be delivered by the United States mails within the District of Columbia a letter addressed to Mr. and Mrs. Frank W. Quiggin, 4964 Allan Road, Washington, D.C.

In violation of 18 United States Code 1341.

## COUNT 6

1. The Grand Jury realleges all of the allegations of paragraph 1 of Count 2 of this indictment, including all those incorporated by reference.

2. On or about November 23, 1959, for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so, the defendants named herein knowingly caused to be delivered by the United States mails within the District of Columbia a letter addressed to Mr. and Mrs. Arthur Garis, 1916 R Street, N.W., Washington, D.C.

In violation of 18 United States Code 1341.

## COUNT 7

1. The Grand Jury realleges all of the allegations of paragraph 1 of Count 2 of this indictment, including all those incorporated by reference.

2. On or about November 30, 1959, for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so, the defendants named herein knowingly caused to be delivered by the United States mails

within the District of Columbia a letter addressed to Dr. and Mrs. Ernest A. Gould, 3704 Harrison Street, N.W., Washington, D.C.

In violation of 18 United States Code 1341.

#### COUNT 8

1. The Grand Jury realleges all of the allegations of paragraph 1 of Count 2 of this indictment, including all those incorporated by reference.

2. On or about November 30, 1959, for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so, the defendants named herein knowingly caused to be delivered by the United States mails within the District of Columbia a letter addressed to Mr. and Mrs. Lee Maxfield, 2301-40th Street, N.W., Washington, D.C.

In violation of 18 United States Code 1341.

#### COUNT 9

1. The Grand Jury realleges all of the allegations of paragraph 1 of Count 2 of this indictment, including all those incorporated by reference.

2. On or about December 16, 1959, for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so, the defendants named herein knowingly caused to be delivered by the United States mails within the District of Columbia a letter addressed to Henry L George, 1601-21st Street, N.W., Washington, D.C.

In violation of 18 United States Code 1341.

#### COUNT 10

1. The Grand Jury realleges all of the allegations of paragraph 1 of Count 2 of this indictment, including all those incorporated by reference.

2. On or about January 4, 1960, for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so, the defendants named herein knowingly caused to be delivered by the United States mails within the District of Columbia a letter addressed to Mr. and Mrs. James B. Nalle, 5201 Klinge Street, N.W., Washington, D.C.

In violation of 18 United States Code 1341.

#### COUNT 11

1. The Grand Jury realleges all of the allegations of paragraph 1 of Count 2 of this indictment, including all those incorporated by reference.

2. On or about December 15, 1959, for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so, the defendants named herein within the District of Columbia wilfully caused to be placed in an authorized depository for mail a letter and check addressed to the Lakewood Country Club, Inc., from Frank W. Quiggin, 4964 Allan Road, Washington, DC.

In violation of 18 United States Code 1341.

#### COUNT 12

1. The Grand Jury realleges all of the allegations of paragraph 1 of Count 2 of this indictment, including all those incorporated by reference.

2. On or about January 7, 1960, for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so, the defendants named herein knowingly caused to be delivered by the United States mails within the District of Columbia a letter addressed to Rev. Thomas M. Duffy, 2665 Woodley Place, Washington, D.C.

In violation of 18 United States Code 1341.

COUNT 13

1. The Grand Jury realleges all of the allegations of paragraph 1 of Count 2 of this indictment, including all those incorporated by reference.

2. On or about February 12, 1960, for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so, the defendants named herein knowingly caused to be delivered by the United States mails within the District of Columbia a letter addressed to Walter C P. Rutland, 2801 Quebec Street, N.W., Washington, D.C.

In violation of 18 United States Code 1341.

COUNT 14

1. The Grand Jury realleges all of the allegations of paragraph 1 of Count 2 of this indictment, including all those incorporated by reference.

2. On or about March 3, 1960, for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so, the defendants named herein within the District of Columbia wilfully caused to be placed in an authorized depository for mail a check in an envelope, addressed to Lakewood Country Club, Inc., from Dr. and Mrs. Ernest Gould, 3704 Harrison Street, N.W., Washington, D.C., to be sent and delivered by the Post Office Department of the United States.

In violation of 18 United States Code 1341.

COUNT 15

1. The Grand Jury realleges all of the allegations of paragraph 1 of Count 2 of this indictment, including all those incorporated by reference.

2. On or about April 8, 1960, for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so, the defendants named herein knowingly



caused to be delivered by the United States mails within the District of Columbia a statement requesting payment of \$200, addressed to Mr. and Mrs. James B. Nalle, 5201 Klinge Street, Washington, D.C.

In violation of 18 United States Code 1341.

COUNT 16

1. The Grand Jury realleges all of the allegations of paragraph 1 of Count 2 of this indictment, including all those incorporated by reference.

2. On or about June 1, 1960, for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so, the defendants named herein within the District of Columbia wilfully caused to be placed in an authorized depository for mail a letter addressed to the Lakewood Country Club, Inc., from Barend A. deVries, 1818 H Street, N.W., Washington, D.C., to be sent and delivered by the Post Office Department of the United States.

In violation of 18 United States Code 1341.

COUNT 17

1. The Grand Jury realleges all of the allegations of paragraph 1 of Count 2 of this indictment, including all those incorporated by reference.

2. On or about June 3, 1960, for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so, the defendants named herein within the District of Columbia wilfully caused to be placed in an authorized depository for mail a check enclosed in an envelope, addressed to the Lakewood Country Club, Inc., from William H. Reckert, 3728 W Street, N.W., Washington, D.C., to be sent and delivered by the Post Office Department of the United States.

In violation of 18 United States Code 1341.

## COUNT 18

1. The Grand Jury realleges all of the allegations of paragraph 1 of Count 2 of this indictment, including all those incorporated by reference.

2. On or about June 9, 1960, for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so, the defendants named herein within the District of Columbia wilfully caused to be placed in an authorized depository for mail a letter, addressed to the Lakewood Country Club, Inc., from Harry A. Calevas, 821-15th Street, N.W., Washington, D.C., together with a membership application and check signed by G. Earl Mantz, 9228 Manchester Road, Silver Spring, Maryland, to be sent and delivered by the Post Office Department of the United States.

In violation of 18 United States Code 1341.

## COUNT 19

1. The Grand Jury realleges all of the allegations of paragraph 1 of Count 2 of this indictment, including all those incorporated by reference.

2. On or about June 28, 1960, for the purpose of executing the aforesaid scheme and artifice to defraud and attempting to do so, the defendants named herein within the District of Columbia wilfully caused to be placed in an authorized depository for mail a check enclosed in an envelope, addressed to the Lakewood Country Club, Inc., from Alan L. Winthrop, 2226-39th Place, N.W., Washington, D.C., to be sent and delivered by the Post Office Department of the United States.

In violation of 18 United States Code 1341.

## COUNT 20

1. The Grand Jury realleges all of the allegations of paragraph 1 of Count 2 of this indictment, including all those incorporated by reference.

2. On or about June 30, 1960, for the purpose of executing the aforesaid scheme and artifice to defraud and attempting to do so, the defendants named herein within the District of Columbia wilfully caused to be placed in an authorized depository for mail a check enclosed in an envelope, addressed to the Lakewood Country Club, Inc., from Henry Ator, 5332-29th Street, N.W., Washington, D.C., to be sent and delivered by the Post Office Department of the United States.

In violation of 18 United States Code 1341.

A TRUE BILL:

Oliver W. Jackson

OLIVER W. JACKSON

*Foreman*

David C. Acheson

DAVID C. ACHESON

United States Attorney in and  
for the District of Columbia

Allen J. Krouse

ALLEN J. KROUSE

Special Attorney, Department of  
Justice

Marvin R. Loewey

MARVIN R. LOEWY

Special Attorney, Department of  
Justice

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF COLUMBIA

Criminal Division

Criminal No. 580-64

UNITED STATES OF AMERICA

v.

LEROY W. PICKETT, ET AL., *Defendants*

**Motion To Dismiss Indictment**

Defendant Leroy W. Pickett moves the Court for an order dismissing the indictment with prejudice and discharging him as a defendant herein.

As grounds therefore, defendant Pickett asserts that his right to a fair trial has been denied by virtue of the unjustified and oppressive delay on the part of the government in seeking an indictment.

The indictment herein was filed on June 23, 1964.

(a) five and one-half years after the alleged conspiracy commenced; and

(b) two years and eight months after the United States Attorney for Maryland presented the case to a Baltimore Grand Jury, which returned no indictment.

The defendant has been denied due process in that his inability to obtain a fair trial has been brought about solely by delay occasioned by the government.

Material factual allegations contained in this motion and supporting memorandum will be supported by affidavits and/or oral testimony at the time of hearing.

WHEREFORE, the defendant, Leroy W. Pickett, respectfully requests that the indictment be dismissed as to him and that he be discharged as a defendant with prejudice.

E. WILLIAM FUREY  
THOMAS R. DYSON, JR.  
500 Hill Building  
Washington, D.C.  
*Attorney for Defendant*  
LEROY W. PICKETT

**Certificate of Service**

This is to certify that the foregoing Motion and attached Points and Authorities were mailed, postage prepaid, to Marvin R. Loewy, Esq., United States Attorney's Office, U.S. District Court, Washington, D.C.; and Thomas A. Wadden, Jr., 100 Hill Building, 839 17th Street, N.W., Washington, D.C., Attorney for defendants Troy V. Post and Bill M. Allen.

THOMAS R. DYSON, JR.

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF COLUMBIA

Criminal Division

Criminal No. 580-64

UNITED STATES OF AMERICA

v.

LEROY W. PICKETT, ET AL., *Defendants*

**Memorandum of Points and Authorities  
in Support of Motion To Dismiss  
Statement of Fact**

Leroy W. Pickett is one of three defendants in the indictment herein containing 20 counts. He is charged in each of them. Count One alleges that Leroy W. Pickett unlawfully conspired with Bill M. Allen, Troy V. Post, and four corporations (co-conspirators, not defendant), in violation of 18 U.S.C. 1343. The remaining nineteen counts charge the three defendants with substantive violations of 18 U.S.C. 1341. The defendants are accused of conspiring to devise a scheme and artifice to defraud by means of false and fraudulent statements and material omissions in connection with the sale of memberships in Lakewood Country Club, Inc. The indictment further alleges that the defendants used the United States mails and interstate communication facilities in furtherance of their scheme to defraud.

The indictment herein was filed on June 23, 1964. It alleges the conspiracy began in November 1958. The substantive counts cover specific acts ranging from October 19, 1959 to June 30, 1960.

In March of 1961 dissident members of Lakewood Country Club filed a civil action in this Court in which the three defendants here were named as defendants. This civil action grew out of disputes between the members and the three defendants concerning the development and operation

of Lakewood Country Club. Counsel for the member group was Manual J. Davis, Esq. As a result of this action, Vinton E. Lee, Esq., a member of the bar of this Court and a Certified Public Accountant, was appointed temporary Conservator of Lakewood Country Club, Inc., until such time as all rights and interests of the parties could be settled.

In May of 1961, Mr. Davis communicated by letter with the Postal Inspector's Office advising them that he had assembled certain facts and documents which might constitute an illegal use of the mails.

The U.S. Attorney's Office in Baltimore had begun their investigation into this matter by July 1961.

During October and November of 1961, the U.S. Attorney in Baltimore was presenting the case to the Grand Jury. Witnesses appeared and testimony was taken. No indictment was returned by the Grand Jury and it was discharged. The matter lay dormant for over two years until a grand jury was convened in the District of Columbia, and returned the present indictment on June 23, 1964.

All civil disputes between the members and the three defendants were settled and appropriate releases executed on February 13, 1962. The settlement agreement was approved by Judge Hart of this Court.

#### Argument

The concept that the statute of limitations is but one bar to prosecution and that oppressive and unjustifiable delay by the government in seeking an indictment will operate to deny the defendant due process was first recognized and discussed by Judge Burger in *Nickens v. United States*, 116 U.S. App. D.C. 338, 340, N.2, 323 F.2d 808, 810 N.2 (1963). In a later case, although relief was denied on the basis of a five-month pre-arrest delay, Judge Bastian repeated the principle announced in *Nickens* and proceeded to clearly delineate the elements of the due process claim as



(a) absence of a valid reason for pre-arrest delay, and (b) prejudice to the defendant. *Powell v. United States*, U.S. Court of Appeals for the District of Columbia, No. 18,315, decided August 30, 1965.

Any doubt as to the application of this principle to specific facts was removed by *Ross v. United States*, U.S. Court of Appeals for the District of Columbia, No. 17,877, decided June 30, 1965. The pre-arrest delay was seven months. Due process was held to have been denied because the delay was "purposeful" and "unjustified." The charges against the defendant Pickett herein were brought five and one-half years after the first date alleged in the indictment, and four years after the date of the latest charge.

Fugitivity, concealed evidence, or new evidence discovered through diligent search, of course, will justify a reasonable delay. However, such was clearly not the case with respect to the defendant Pickett. A lifetime resident of Chevy Chase, Maryland, he remained there throughout the entire civil litigation, and during the Baltimore Grand Jury hearing. When no indictment was returned, and when the civil litigation was settled with the Lakewood members, he continued to live and work in the Washington, D.C. area. In the summer of 1962, he and his family moved to Austin, Texas, in response to an employment opportunity. Two years and eight months after the discharge of the Baltimore Grand Jury, upon return of the present indictment, he was required to resign his job and he and his family have been forced to return to Washington in a desperate search for records (many of which cannot be located), witnesses and other facts and circumstances necessary to defend against the charges of fraudulent intent. He is called upon now at this late hour to prove by admissible evidence that his acts, words, and other manifestations, as early as 1958, were not intended to deceive. He must, in some instances, establish that he said certain things and conveyed certain thoughts inconsistent with a fraudulent intent, and,

in other instances, he must now establish that he did not say certain things or did not convey certain thoughts. The burden to do so, if not totally impossible to sustain, is obviously "oppressive" and "prejudicial" within the clear meaning of *Ross v. United States, supra*.

This brings us to the question as to whether or not the delay was "justified."

In the dissident members' civil action filed March 15, 1961, after the date of the last alleged offense, the Court appointed as temporary Conservator of the corporation, Vinton E. Lee, Esq., a member of the bar of this Court and a Certified Public Accountant. Mr. Lee undertook a broad and extensive investigation of the financial history, publicity data, leases, stock ownership, and other pertinent financial information. He reported completely and thoroughly the extent of his findings to this Court, which findings then became a matter of public record. Moreover, he personally conferred with the United States Attorney for the State of Maryland, Mr. Tydings, and his assistants prior to his Grand Jury testimony in Baltimore in October 1961. He testified at that hearing at great length and in extensive detail, along with most, if not all, of the membership salesmen and other witnesses.

In short, the government was as fully aware of all possible violations in October 1961 as it is today. Notwithstanding complete knowledge of all facts and complete access to any proof which might have been required, the matter was allowed to lay dormant until it was again presented to the Grand Jury in this jurisdiction, which returned an indictment two years and eight-months after the first Grand Jury refused to indict.

The foregoing facts describe an unconscionable, vexatious and unjustified delay which operated to no other objective than to oppress and prejudice this defendant.

A final comment on the decision of *Ross v. United States, supra*, will illustrate its controlling force on the facts of this case. In *Ross*, a narcotics case, the government's principal justification for the delay was the interest of the public in allowing the narcotics investigation to continue and thereby permit the detection of the source of the drug traffic. Notwithstanding such a compelling public interest in favor of the delay, the Court made that interest subordinate to the right of the defendant to due process of law, free of an unreasonable seven-month pre-indictment delay. Here, with a delay of from four years to five and one-half years prior to indictment, with no compelling public interest and with no justification for the delay, the defendant is clearly entitled to be relieved from further prosecution by a dismissal of the indictment.

#### Conclusion

For the foregoing reasons, defendant Pickett respectfully requests that the motion to dismiss the indictment be granted.

Respectfully submitted,

E. WILLIAM FUREY  
THOMAS R. DYSON, JR.  
500 Hill Building  
Washington, D.C.  
*Attorneys for Defendant*  
LEROY W. PICKETT

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF COLUMBIA

Criminal Case No. 580-64

UNITED STATES OF AMERICA

v.

LEROY W. PICKETT, ET AL., *Defendants*

**Defendant Leroy W. Pickett's  
Supplemental Memorandum in Support of  
Motion to Dismiss**

At the outset it is submitted that the Government's supplemental memorandum herein is not responsive to the request of the Court, namely, for Supreme Court authority on the issue of whether the Statute of Limitations is the sole bar to prosecution. Government counsel does admit, however, on page two of the supplemental memorandum that there are no Supreme Court cases directly in point.

The cases cited by the Government either deal solely with Sixth Amendment speedy trial rights or Rule 48(b) of the Federal Rules of Criminal Procedure, all of which are post indictment issues. Three cases cited by the Government, *United States v. Simmons*; *Nickens v. United States*; *Foley v. United States*, recognize the rule of law which defendant Pickett asserts controls here.

In summary, defendant Pickett asserts that the law governing this case is that when pre-indictment delay is unreasonably oppressive and unjustified, and the delay operates to the prejudice of the defendant, the indictment may be dismissed even though brought within the applicable Statute of Limitations, as the Statute of Limitations is not the sole standard to measure delay between offense and trial. *Nickens v. United States*, 116 U.S. App. D.C. 338, 340 n.2. 323F. 2d 808, 810 n2 (1963); *Ross v. United States*, U.S. Court of Appeals for the District of Columbia, No. 17,877, decided June 30, 1965.

The Government at the oral hearing on this motion offered no evidence nor indeed any oral representation to the Court as to the necessity or reasonableness of the delay here. It is submitted that clearly the delay is oppressive and without justification. That the defendant Pickett is prejudiced by the delay is clear and supported by the facts brought out at the oral hearing on this motion and by the very existence of the delay.

On the basis of the above, the Points and Authorities originally filed in support of this motion, and the oral hearing, defendant Pickett respectfully requests that the motion to dismiss the indictment be granted.

Respectfully submitted,

E. WILLIAM FUREY  
500 Hill Building  
Washington, D. C.  
*Attorney for Defendant*  
Pickett

**Certificate of Service**

This is to certify that I have this 29th day of September, 1965, hand delivered copies of the foregoing Memorandum to Marvin R. Loewy, Esq., Department of Justice, Attorney for the United States; and Thomas A. Wadden Jr., Esq., 1000 Hill Building, Washington, D. C., Attorney for Defendants Troy V. Post, Jr., and Bill M. Allen.

E. WILLIAM FUREY

141

**Alexander J. Greene**

called as a witness by the government, being first sworn, was examined and testified as follows:

• • • • •

144 Q. Did you hold some public office in 1959?

A. Yes, I was the mayor of Rockville, Maryland.

Q. Did Mr. Pickett describe to you what your duties and responsibilities would be as an advisor of the  
145 country club?

A. Yes, I was concerned that I would not have the time to devote to any kind of detail work with the club, but he indicated to me that we would be called upon from time to time to advise on policies of the club with respect to the local community, with respect to membership and various operating policies of the group, and that this would not be time consuming, but that we would be merely giving of what knowledge we had.

Q. Now, did Mr. Pickett describe the membership setup that he and his associates anticipated using?

A. Yes. He said the club would have two kinds of members. There would be a life membership and a monthly membership which would be limited, both would be limited in size to, I think, approximately a thousand members. And I think about two hundred and fifty would be life and the other three-quarters would be monthly members.

I think he indicated that the dues or the initial investment would be, I think, about a thousand dollars for a life member, or thereabouts; and somewhat less than that for an annual member.

Q. And did you receive a membership?

A. Yes, I received an honorary membership, I believe, in that. I did not pay for a membership.  
146

Q. Now, did you consent to become a member of this advisory board, Mr. Greene?

A. Yes, I did.

Q. And following the time when you consented to Mr. Pickett, did there come a time when you began to see your name in the paper?

A. Yes.

\* \* \* \* \*

150 Q. Mr. Greene, again I will ask you to look at Exhibits 61 and 71, newspapers dated July 26, 1959, from the Post and Star, and ask you if your name appears thereon?

A. Yes, my name appears.

Q. Does it appear on this?

A. Yes, it does.

Q. What is the title of the list?

A. "Advisory Board."

Q. Would you read the names and titles? Do other advisors appear along with your name?

A. Yes.

Q. Would you read the names and titles of those who appear with your name?

A. Ralph Bogart, Bogart & Brownell Insurance; Robert Brownell, Bogart & Brownell Insurance; Cy Campbell, Publisher & Editor, Rockville Sentinel; my own name, Alexander Greene, Mayor of Rockville; Maury Fitzgerald, Golf Editor, Washington Post; Ralph Guglieimi, Washington Redskins.

151 Q. G-u-g-l-i-e-i-m-i?

A. G-u-g-l-i-e-i-m-i. Major General Dudley Hale, Retired, Cook Electric Company; Bill Malone, WMAL Radio-TV; Robert McLaughlin, President, Board of Commissioners, Washington, D. C.; Foster Shannon, Shannon & Luchs, Real Estate; Sam Snead, Professional Golfer; Jack Westland, Member of Congress; Ken Wood, WEAM Radio.

\* \* \* \* \*

Q. I hand you now, Mr. Greene, Exhibits 63 and 64 and 72 in evidence, and ask you to look at the advisory board, if there is one on those pages.



(The witness perused the exhibits.)

Q. And tell me if your name appears thereon and if the same people appear?

A. Yes. There is a list of the advisory board on all three. My name does appear on it, and in addition the then Senator from Maryland, John Marshall Butler's name appears on it.

Q. I now hand you Exhibits 65, 66 and 73. Incidentally, would you state the date that appears on those papers?

A. September 6, 1959. All three are September 6, 1959.

152 Q. I now hand you Exhibits 65, 66 and 73, and ask you to state the date, look at the advisory board and see if your name appears, and if there are any changes?

(The witness perused the exhibits.)

A. The date is September 13, 1959. The advisory board is listed on all three. One name is removed from two of them and is present on the third one.

Q. What name is that, sir?

A. Maury Fitzgerald, Golf Editor of the Washington Post.

The Court: You mean it doesn't appear on two, is that what you mean, Mr. Greene?

The Witness: Yes, Your Honor.

The Court: But it does appear on the third?

The Witness: Yes, Your Honor.

• • • • •

155 MR. LOEWY: This is No. 69.

MR. BERGAN: Thank you.

MR. LOEWY: And I am reading from a small box which appears in the lower righthand corner as you face it, and, among other things, it says:

Soon the \$300.00 and \$835.00 life or non dues paying memberships will be history.

And I will hand Government Exhibit 69 to the jury.

The Court: Form a group together you four there, please. That's it. And then the next four will take it on from there.

(The exhibit was passed to the jury.)

MR. LOEWY: And, if Your Honor please, I will read from November 22nd.

The Court: Wait a minute. You had better let them look at that one. They can't look at both of them at one time, Mr. Loewy.

MR. LOEWY: Very well, Your Honor.

The Court: I may say, ladies and gentlemen, that you will have this material in the jury room with you  
156 when you go to deliberate, so you are not required to memorize everything you are seeing right now.

May I see that, too, please, Mr. Loewy?

(The exhibit was handed to the Court.)

MR. LOEWY: Now, if Your Honor please, I will refer to the same box in an earlier ad, July 26, 1959, where I will read to the jury:

A specially limited number of life memberships, non dues paying, are available at \$835.00.

That was No. 71.

The Court: That was 71?

MR. LOEWY: That is correct, Your Honor.

The Court: What was the date of that?

MR. LOEWY: That, Your Honor, was July 26, 1959.

And finally, ladies and gentlemen, I will read from an ad dated November 22, 1959, and refer you to a box in the lower lefthand corner as you face it:

Membership cost will increase to \$450.00 for regular memberships and \$1100.00 for lifetime memberships November 30th.

The Court: How much? Eleven hundred dollars?

MR. LOEWY: Yes. Eleven hundred dollars.

157 The Court: What was that number?

MR. LOEWY: The number, Your Honor, was 76.

The Court: No. 76?

MR. LOEWY: Yes, Your Honor.

The Court: All right.

MR. LOEWY: And with the leave of the Court I will hand both of these to the jury.

The Court: Again, please group yourselves to look at the exhibit.

MR. LOEWY: And with the leave of the Court, I will the rest of them to the first group of jurors, and they can leaf through them, if they care to.

The Court: All right.

(The exhibits were passed to the jury.)

The Court: I am going to ask you, ladies and gentlemen, in looking at each one, just look for yourself. Don't comment about it. You can do that later when the case is submitted to you.

By MR. LOEWY:

Q. Mr. Greene, counsel has just examined what is marked as Government's Exhibit No. 80 for identification, and if there is no objection I will hand it to you and ask you if you have seen that before?

158 Yes, I have.

Q. And did that document, when you saw it before,—did that become the subject of a piece of correspondence between you and one of these promoters?

A. Yes, it did.

Q. Then, Mr. Greene, would you tell us what that is now?

A. Well, this is a letter which was sent to a large mailing list in my area certainly and around the county, and it is an advertisement, requests some information as to what the memberships at this club are, what the club is all about, and soliciting people's inquiries so that they may be visited, I presume, by a salesman and be informed about membership.

Q. Now, Mr. Greene, did there come a time when you wrote a letter to one of those three regarding that?

A. Yes, indeed.

Q. And may I show you what counsel has examined and what has been marked Government's 81 for identification.

(The witness perused the exhibit.)

Q. What is that, please?

A. This is a copy of a letter I wrote to Mr. Pickett.

Q. Did that letter come your own files?

A. Yes, it did.

Mr. LOEWY: The government would now offer in  
159 evidence Exhibits 80 and 81 marked for identification.

Mr. BERGAN: Let me see 81, please.

(The exhibit was handed to Mr. Bergan.)

Mr. BERGAN: I have no objection to either.

Mr. DYSON: No objection, Your Honor.

THE COURT: Very well. Government's 80 and 81 are received in evidence.

Mr. LOEWY: Thank you, Your Honor.

(Government's Exhibit No. 80, Circular letter beginning, "Dear Neighbor: There is no doubt about it...", was received in evidence.)

(Government's Exhibit No. 81, Letter dated 11-2-59 to Leroy Pickett from Alexander Greene.)

By Mr. LOWEY:

Q. Mr. Greene, I will hand you both of them and ask you to read Government's Exhibit 81, your letter.

Mr. LOEWY: If the Court would accept copies of these, I have them.

THE COURT: For the sake of the jury, shouldn't both be read?

Mr. BERGAN: I think No. 80 should be read first.

THE COURT: I think if it applies to the same thing, it ought to be.

MR. LOEWY: Well, it is not really applying, Your  
160 Honor, but I have no objection to Mr. Greene  
reading it.

THE COURT: Mr. Greene, I guess you are chosen to be  
the lucky one.

MR. BERGAN: Your Honor, I don't have any objection to  
Mr. Loewy's reading it.

THE COURT: I was going to say that Mr. Loewy pushed  
some of his work off on somebody else.

MR. LOEWY: I get the hint, Your Honor.

I am reading from Government Exhibit No. 80 that I hold  
in front of you so you can see what it looks like.

The stationery is marked "Lakewood Country Club,"  
with a post office address, Washington, D.C.

Down the side is a list of names, and I think that coun-  
sel won't object if I say that these are the same names  
previously given.

"Dear Neighbor:

"There's no doubt about it: you'll get more fun out  
of life as a member of Lakewood Country Club (and  
so will your family).

"In fact, just name your pleasure—and you'll find  
it at Lakewood.

161 "Three swimming pools—one for diving and swim-  
ing, a free-form pool for adults, and a special pool  
for the youngsters will be available next Spring. The  
challenging 18 hole championship course and the  
stimulating 9 hole par 3 course will be second to none.  
And because of the club's convenience to your home,  
you'll be out there whacking the ball often. Golf and  
clubhouse facilities will be available next Summer.

"The clubhouse is 'family-engineered' which means  
that your family will enjoy clubhouse activities all  
year round. And whether it's a style show or book  
review for the ladies, a Halloween party for the  
youngsters, a dance for the teenagers, or a golf tourna-

ment for the men, you'll know that if it's fun for you and your family it'll be happening at Lakewood Country Club.

"And not at 'Country Club' prices, either. No sir.

"The food and beverage prices will be comparable to any reasonable restaurant in the area. And another thing that makes sense is the small membership cost and low monthly dues.

"Although the membership cost will soon advance, *a few charter memberships are still available at \$300. (plus tax) with monthly dues of only \$12.00 (plus tax).*

Life memberships (non dues paying) are obtainable for only \$835. *All memberships include the entire*  
 162 *family.* Something else: no assessments at Lakewood—ever. And, of course, no green fees or swim fees, either.

"*Just maybe you and your family will get more fun out of life as members of the Lakewood Country Club.* The pleasure will be all yours.

"The enclosed postage-free card will bring all the answers.

"Membership Committee  
 "Lakewood Country Club

"P.S. Our office is located at 4910 Cordell Ave.  
 Phone OLiver 6-5877."

• • • • •  
 Now, Government's Exhibit 81 in evidence, a carbon copy of a letter, has the return address: 11 Laird Street, Rockville, Maryland.

It is addressed to Mr. Leroy Pickett, Lakewood Country Club, 4910 Cordell Avenue, Bethesda, Maryland.

"Dear Mr. Pickett:

"It has recently been called to my attention that a circular letter has been sent to residents of Montgomery County inviting their interest in the Lakewood

Country Club and signed by the designation 'Membership Committee.' The only names on the letterhead,  
 163 however, are those of the Advisory Board, including my own, but the names are not identified as members of the Advisory Board, thus giving erroneous impression that the individuals listed constitute the Membership Committee. This causes me considerable concern and brings to issue several other items with which I am also concerned.

"I feel deeply responsible to anyone who calls on me for information and to those who rely upon my position for assurance as to the progress and the stability of the Club. However well impressed I may be by the individuals involved, I am forced to conclude that I am not well informed as to specifics and I may only impart vague generalities, other than that I believe that the establishment of the Club would be an asset to the community.

"I have also been asked repeatedly whether membership funds are placed in a trust or escrow status until the club is in operation. To my knowledge they are not, but the idea seems sound. I would like to know whether it is standard practice or why such guarantee of deposits should not pertain in this case. While I recognize that the pressure of putting together such a large enterprise as the Lakewood Club necessitates many shortcuts, I sincerely believe that the Ad-  
 164 visory Board should be completely informed.

"To sum it up:

"1. I believe the Club stationery should be revised to designate the Advisory Board as such and to include the names of the principals as well as the Membership Committee or whatever committee signs the communication.

"2. I believe a financial statement should be provided the Advisory Board as soon as one can be prepared.



"3. A progress report regarding memberships as well as construction should be supplied the Advisory Board periodically.

"4. The details of the corporate structure of the Club should be set forth in writing.

"I am sure that other members of the Advisory Board would find these measures helpful to them. Perhaps it would be desirable to hold an Advisory Board meeting in the near future to discuss some of these or other questions.

"Sincerely,

"Alexander J. Greene

• • • • •  
201 A. Mr. Post and Mr. Allen Pickett were there, and Mr. Bogart and Mr. Brownell were there. Mr. Prescott Allen, who is Editor of the Bethesda Record, who I think was also later placed on the Advisory Board, was there. And there were various members of the membership, a committee of membership, present.

I believe Mr. Estok. I think Walter Ewell and Mr. Murdock. I do not recall exactly, but there was quite a  
202 large group at that session.

• • • • •  
219 Q. Let me show you what has been marked as Defendant's Exhibit No. 2 and ask you to look through it and see if that may not have been one of the items which Mr. Pickett showed you at that meeting?

A. It may be. But I do not remember it.

• • • • •  
220 Q. You can not identify that as what he showed you?

A. It may be. I do not remember. But there was material like that.

• • • • •

252 A. Mr. Pickett stated that one of the other members of the promotion group was Mr. Post, whose father is known to be a very wealthy man. In fact, I think Mr. Pickett stated that he had something like \$40 million, and that this could be used to "bail out" the membership, or the promoters, should they run into difficulty.

Q. Now, on this occasion that Mr. Pickett was in your home, did he have any literature, or documents to show you, or the others?

A. He had information regarding another club in Texas. I believe it was Glen Haven Club, which was promoted by the same three people.

Q. Which "same three people," Mr. Bacon?

A. Oh, Mr. Pickett, Mr. Post, and Mr. Allen.

Q. Now, on this occasion, did Mr. Pickett have anything to say about the total number of members that were contemplated in this club?

A. Yes, there would be between 1,000 and 2,000 total membership, of which there would be a maximum of 150 life members.

253 Q. Now, what was to be the cost of the regular membership, if you recall?

A. The dues-paying members?

Q. The regular members——

The Court: I think it is not the life members. The other membership, whether it is called regular or not. Other than life members is what he is after.

The Witness: The dues-paying membership, initiation fee was \$350, I think, or in that neighborhood.

By Mr. Barnes:

Q. And what were the dues proposed for that type of membership?

A. I think it was around \$12 monthly.

Q. And the life membership, what was the initial outlay for a life membership?

A. It was \$1,000.

Q. And did Mr. Pickett say anything about dues for the life members?

A. Life members would not pay dues.

Q. Was there anything said about assessments?

A. Life members would not be subject to special assessments.

Q. And was there any discussion about a minimum spending requirement, Mr. Bacon?

254 A. No, there was not, at that time—well, maybe I did not answer that question correctly. The question was asked, and it was stated there would not be a minimum spending requirement.

A. Did you answer the question, yourself?

A. I am not sure whether I did or whether Mr. Elbers did.

The Court: The question was asked, as I understand it?

The Witness: Yes, sir.

The Court: All right.

• • • • •  
268 Q. But you didn't contact anyone associated with the club about it?

A. I contacted—about that time I contacted whoever it was that was representing the club on site, in the trailer, whatever existed at that time.

Q. Do you recall that gentleman's name?

A. No, I do not.

• • • • •  
269 Q. Now this meeting was almost seven years ago. Do you recall mention in the conversation of the term minimum spending requirement?

270 A. I remember bringing it up. Either I brought it up or Mr. Elbers.

Q. In what manner was it brought up?

A. As a question, will there be.

Q. And you used that specific term?

A. I don't remember it.

• • • • •

278 Q. You discussed, for example, did you not, or at least you considered at the time, for example, the type of profit that would be available from bar and restaurant sales?

A. Yes. We discussed these things. I don't remember the numbers though.

• • • • •

287 Mr. Loewy: If Your Honor please, the Government would now offer the exhibits just marked in evidence, based upon Mr. Peabbles' testimony and also that they have been authenticated by the state authorities.

The Court: Has counsel seen them? Have you any objections?

Mr. Bergan: We do have. We don't object to the identification or to the proper certification, but I do object to the admissibility of some of them.

May we approach the Bench, Your Honor?

The Court: I think you better come to the Bench.

(Whereupon counsel approached the Bench and the following proceedings were held:)

The Court: There is something here that seems to be unrelated.

Mr. Bergan: Several of these. That is the basis of my objection. Some which relate to other corporations which—some or one, or two, and in perhaps one or two instances all of these defendants were involved in, but not in my view directly related to Lakewood or more specifically to the charges in the indictment.

The Court: Well the indictment—

288 Mr. Bergan: I can tell you which ones we don't object to. We don't object to 92, 93, 94 or 95. Certainly we have no objection to any of those.

Mr. Dyson: I make the same objection and additionally the fact that Mr. Pickett is not involved in many of the other corporations.

The Court: Tell me what do these others do, how are they related to this?

Mr. Loewy: We have a threefold reason for introducing those, Your Honor. First of all, they were corporations which Mr. Post asked to be organized.

Second, they are corporations to which Lakewood money was diverted.

Now proof of whether the money went to a certain corporation, of course, would be meaningless unless I can show that these men are also connected with the corporation which received the money.

The Court: I think at this time you have not laid a sufficient foundation for these others, the unrelated corporations, thus far in the testimony or the indictment.

You have them identified by this witness who is from the Corporation Trust Company.

I am not going to admit them into evidence at this time, 96, 97, 98, 99, 100, 101, 102, and 103, because  
289 there is nothing that has come to my attention yet that shows they are in any way relevant to this.

On the other hand 92 is the Lakewood Management Corporation, 93 is the Lakewood Country Club, 94 is PAP, Inc., and 95 is the Country Club Developers, Inc., and I understand counsel for the defendants do not object to their being received.

Mr. Bergan: No objection to those four.

Mr. Dyson: No objection.

The Court: I will receive 92 through 95 and later on you can connect the others through some other witness or at another time.

• • • • •

290 The Court: Very well, 92, 93, 94 and 95 will be received in evidence at this time.

Mr. Loewy: Thank you, Your Honor.

(Government's Exhibit No. 92, Certified copy of Articles of Incorporation Lakewood Management Corp. received in evidence.)

(Government's Exhibit No. 93, Certified Copy of Articles of Incorporation, Lakewood Country Club, received in evidence.)

(Government's Exhibit No. 94, Certified copy of Articles of Incorporation, PAP, Inc., received in evidence.)

(Government's Exhibit No. 95, certified copy of Articles of Incorporation, Country Club Developers, Inc., received in evidence.)

• • • • •

292 Mr. Loewy: Now, if Your Honor please, I will refer to Government Exhibit No. 92 in evidence, and I will read the very top three lines which say: Articles of Incorporation of the Lakewood Management Corporation.

Then, if Your Honor please, I will turn to the sixth paragraph, the paragraph marked sixth in capital letters, and I will read that: The number of directors of the corporation shall be three, which number may be increased or decreased pursuant to the bylaws of the corporation and shall never be less than three. The names of the directors who shall act until the first annual meeting or until their successors are duly chosen and qualified are Bill M. Allen, Leroy W. Pickett, Troy V. Post.

If Your Honor please, I will now turn to Exhibit 94 and read from the top: Articles of Incorporation of PAP, Inc.

I will turn to a paragraph again numbered paragraph six, and if counsel doesn't object to a short-cut, I will state that that refers again to directors——

Mr. Bergan: I think he should read the paragraph.

The Court: I think——

293 Mr. Loewy: I will, Your Honor. Six. The number of directors of the corporation shall be three, which number may be increased or decreased pursuant to the bylaws of the corporation and shall never be less than three. The names of the directors who shall act until the first annual meeting or until their successors are duly chosen

and qualified are Bill M. Allen, Leroy W. Pickett, Troy V. Post.

Now I will turn to No. 95, which is a different form. It is District of Columbia rather than Maryland.

It states: Articles of Incorporation of Country Club Developers, Inc. In the tenth paragraph, the number of directors constituting the initial board of directors for the corporation is three, and their names and addresses, including street number of the persons who are to serve as directors until the first annual meeting of shareholders or until their successors are elected and shall qualify are Bill M. Allen, 611 Warner Building, Washington, D.C.; Leroy W. Pickett, 611 Warner Building, Washington 4, D.C.; Troy V. Post, Jr., 611 Warner Building, Washington 4, D.C.

Finally, I would turn to No. 93. At the top, Articles of Incorporation of Lakewood Country Club, Inc. I will turn to the seventh paragraph, which is inside about three pages: Seventh, the affairs and business of this corporation shall be managed and conducted by a board of directors who, except as to the first board of directors, shall be elected to office in such manner and for such terms and who shall have such powers and duties as may be provided in the Articles of Incorporation and the bylaws of the corporation. The corporation shall have a board of directors of—and there is a blank here—in number, which number may be increased or decreased pursuant to the bylaws of the corporation, but shall never be less than three and the following shall act as such until the first annual meeting or until their successors are duly chosen and qualified.

The three names that follow the colon here are Paul V. Rogers, Robert A. Bock, B-o-c-k, and Robert W. Vranich, V-r-a-n-i-c-h.

• • • • •

320 Mr. Bergan: I am reading from paragraph the fifth, of the same document, the articles of incorpora-



tion of the Lakewood Country Club, Inc., paragraph the fifth:

"This corporation shall be a non-stock, non-profit corporation.

"This corporation is organized for and will be operated exclusively for pleasure and recreation, and no part of the net earnings shall inure to the benefit of any director or member."

• • • • •  
329 Q. And the copy that you made, 6-C is the copy of the by-laws of Lakewood Country Club, is it not?

A. Right.

Q. Now I am going to ask you if you have ever seen Exhibit 6-B before. A. I do not know, sir.

• • • • •

**Benjamin Field.**

334 being first duly sworn, was examined and testified as follows:

• • • • •

339 Q. Now on this occasion did Mr. Allen identify his connection with Lakewood Country Club, in its promotion or development? A. None other than as a representative of the club for the purpose of accepting an application for membership.

Q. Also on this occasion was there any discussion about the proposed financing of the Lakewood Country Club? A. None with me, no sir.

Q. Did Mr. Allen describe to you the types of membership proposed in Lakewood Country Club? A. Yes.

Q. And what types of membership were proposed? A. There were two types of membership. One was this very limited group which was described in the advertisement as a group of life memberships, specially limited life memberships; and the other was the general membership, which would be a dues-paying from time to time mem-

bership. I was interested in the life membership and I discussed that with him.

Q. Did he tell you at that time how many life members were proposed. A. Yes, he did.

Q. And what was that figure, sir? A. He said there would be no more than 150 life members.

Q. And did he discuss the dues, and whether or not the life members would pay any dues, at that time? A. As I understood it, it was non-assessable. We would pay nothing, beyond the initial payment of the life membership fee, plus the excise tax—all of which amounted to \$1,002.

Q. Was anything said at that time about a minimum spending requirement? A. None at all.

Q. Did Mr. Allen tell you how many total members were proposed in the club? A. Yes, he did.

Q. And what was that figure, Mr. Feld? A. He told me they would take between 1200 and 1500.

\* \* \* \* \*

371 Q. You testified as I recall, in response to some of Mr. Barnes' questions that Mr. Allen told you that there would be only a limited number of life memberships available. A. That is correct.

Q. Did you put a figure on what Mr. Allen said? A. He told me.

Q. No, did you give us the figure? A. Yes, 150.

Q. Why was that figure important to you? A. I wanted to know specifically what he meant by an especially limited number, and he told me, 150.

Q. Why did the figure of 150 attract you so? A. It was very important to me for a simple reason. If everybody was a life member, there was no likelihood of the club receiving current funds and operating as a functioning entity or unit. With a limited number of persons occupying a life membership as a sort of inducement to get the club running, and provide immediate cash through these limited numbers of life members. Then it seems to me a sound financial structure.

\* \* \* \* \*

378 Q. Now, did there come a time in 1959, Mr. Bock,  
when Mr. Pickett called you and you and he had a  
conversation? A. Yes, sir.

379 Q. And what part of the year would that be? A. I  
cannot remember.

• • • • •  
380 Q. Were you asked to do anything in connection  
with the Lakewood Corporation? A. I was asked  
to be an officer, in a holding company for some type of  
company leading to the formation of the club.

Q. And who asked you to assume this position? A. I do  
not remember, actually. Probably Mr. Pickett, or it could  
have been somebody at the table. I do not recall  
381 really.

• • • • •  
The Court: Do you have any recollection of who asked  
you?

The Witness: No, I do not remember actually which.

By Mr. Loewy:

Q. Were all of the gentlemen you just named seated  
at one table? A. I do not remember. I assume they were.

Q. Was anyone else seated there? A. I think some  
secretaries.

Q. Were there some girls seated there? A. I think there  
were some girls. I cannot swear to it.

Q. How long did you say you had been friends with Mr.  
Pickett? A. Since High School.

Q. Did they offer you any particular office in the Lake-  
wood Country Club? A. I cannot remember.

382 Q. Did they ask you to become a director? A. I do  
not know exactly what the capacity was.

• • • • •  
Q. Let me ask you this: Was it Mr. Vranich or Mr. Van  
Veen who invited you to become an officer of the Lakewood  
Country Club? A. No.

Q. Was it Mr. Rogers? A. I think I said Mr. Pickett.

Q. You are now sure that it was Mr. Pickett? A. I do not know. I honestly cannot be——

Q. That is why I am asking you how you are sure that it is not. Was it Mr. Rogers, could you say that, or was it Mr. Rogers? A. I do not know.

• • • • •

387 Q. And what did you tell him about the paper? A. I don't remember telling him anything about the paper.

• • • • •

388 Q. Now, do you know who the president of the club was?

The Witness: No.

• • • • •

394 Q. But at some time prior to the meeting at the Mayflower Hotel that you attended, you had some contact with Mr. Pickett? A. Yes.

Q. Can you relate to us the substance of that conversation? A. I cannot remember.

• • • • •

397 Q. Doctor, does it refresh your recollection if I were to tell you that the paper which you were asked to sign was a bank signature authorization for a bank account in the old Munsey Trust Company? A. I do not remember it at all.

Q. Is it possible that that is the kind of document that it was? A. I have no recollection.

Q. Is it possible that you were told or advised not to sign such a document because you might incur some personal liability and because of that you later declined and advised Mr. Pickett that you declined to sign it? A. I do not remember.

Q. In fact, you have very little recollection of that meeting in the Mayflower at all, is that correct? A. That is correct.

Q. You wouldn't deny that the document which was shown to you in the Mayflower was a signature form for a banking authorization? A. I just have no recollection of it.

• • • • •

401 The Court: What did he say at that time?

The Witness: I just cannot exactly recall.

The Court: I mean the substance.

The Witness: Something about becoming a Board of Director member at Lakewood.

• • • • •

**Robert Walter Vranich**

422 a witness called by counsel for the Government, having been first duly sworn, was examined and testified as follows:

• • • • •

428 Q. Do you recognize that document? Look it over for a moment. A. Vaguely.

• • • • •

429 Q. Was anyone else present at the time that you signed that in Mr. Allen's apartment? A. Mr. Rogers. I remember that, I believe.

Q. Mr. Rogers was there then? A. Yes.

Q. How about Mr. Allen? A. Oh, yes, he was there.

Q. Did he sign that while you were there? A. I do not remember.

Q. Was Mr. Post present at the time? A. I do not remember that, either.

• • • • •

431 Q. I do not believe I asked you, Mr. Vranich, where was this signed, Government's Exhibit No. 39 for identification? A. I cannot say. I do not remember. I could say the apartment, but I could not back it up.

• • • • •

447 Q. Are you at this time, Mr. Vranich, able to  
448 recall what was said to you regarding that document  
at the time you signed it? A. No.

Q. Is your recollection then exhausted with respect to  
that subject? A. Yes, right now.

Q. Does what you have read refresh your recollection as  
to what was said to you about that contract at the time you  
signed it? A. Well, the only thing I can say is what my  
deposition says, there would be a brief—

Mr. Bergan: Excuse me, Your Honor. That doesn't  
refresh his recollection.

The Court: I think the question now, sir, is this, whether  
having read this material presented to you  
449 by Mr. Loewy, do you now have an independent  
recollection of what was said to you on the occasion  
you signed this exhibit known as Government's 39 for iden-  
tification?

The Witness: No, sir.

• • • • •  
453 Q. Now, Mr. Vranich, were you ever shown that  
book prior to this time, at a time when Mr. Post  
was present?

Do you recall? A. I don't remember, no.

• • • • •  
469 Q. Who invited you to the Mayflower meeting,  
Mr. Vranich, if you recall? A. I can't remember. As  
I stated earlier in reference, I was under the opinion that  
it was going to be a dinner and social evening.

• • • • •  
470 Q. Do you recall Doctor Bock being asked to sign  
it? A. I can't say that—I can't say yes to that ques-  
tion. I don't remember. I wasn't paying that much atten-  
tion.

Q. Were there any other documents that you were asked  
to sign at that time? A. I can't remember.

• • • • •

475 Q. Incidentally, before we get to this, Mr. Vranich, I believe you stated yesterday that when you were asked and agreed to become an officer of Lakewood you advised whoever it was who asked you that you were quite busy with your business endeavors and wouldn't have a great deal of time to spend on this? A. Yes.

Q. Do you recall who it was that you advised of  
476 that fact? A. I can say Mr. Allen, but I don't—I can't—

Q. Was it in the presence of a good many people or just a conversation? A. I don't remember that.

• • • • •

477 Q. And on July 12, 1961, some five years ago, would you say that your recollection of the events of Lakewood—the Lakewood events was better than it was today? A. Yes.

• • • • •

482 Q. Now, Mr. Vranich, let me show you what you have seen several times in the last two days, Government's Exhibit No. 39, and ask you if you recall where you were and with whom at the time you signed that agreement? A. Well, no. I can qualify the answer but I can't say—I will say no as the answer to your question.

Q. You cannot say where you were or with whom at the time you signed this? A. Each document, no, I can't remember. I stated, I believe, with Mr. Allen, but I don't—of course, with— well—

The Court: I didn't hear you. Will you repeat it turning to the microphone.

The Witness: I was looking the wrong way.

I assume that these people that signed it would be there but I can't remember.

By Mr. Bergan:

Q. And the signatures on the document are Mr.  
483 Allen, Mr. Post, Mr. Vranich, and Mr. Rogers. Is that correct, sir? A. Correct.



Q. You are not able to say that you were not in the presence of those four gentlemen—those three other gentlemen at the time you signed that document? A. No, I can't.

• • • • •

**Mr. Paul V. Rogers**

497 was called as a witness by and on behalf of the Government and, having been first duly sworn, was examined and testified as follows:

• • • • •

500 Q. What office were you asked to assume? A. Initially, I don't recall what office I was to assume.

Q. Were you elected President of the Club? A. Presumably.

Q. Not presumably. Do you know whether or not you were elected? A. Do you mean as to the legal qualification? I was elected according to Mr. Post, Mr. Allen and Mr. Pickett.

Q. How did you find out that you were President of the Club? If you recall. A. I don't recall that, specifically. That is as to time and place, etc.

• • • • •

512 Q. How did you know the meeting was going to be held, had you called it? A. I think there was a specification that you had to have an annual meeting.

Q. My question was: Did you call it? A. No, I didn't.

Q. Well, do you recall how you were notified how such a meeting was taking place? A. No, I don't recall.

Q. Did someone tell you to go out there? A. Presumably; yes.

Q. Do you recall whether or not anyone told you to go out there? A. Well, somebody told me to go. I just don't recall who told me to go out there.

• • • • •

**Mr. John H. Pardee**

516 was called as a witness by and on behalf of the  
Government and, having been first duly sworn, was  
517 examined and testified as follows:

• • • • •

520 Q. Did Mr. Post come to your home? A. Yes, sir,  
he did.

Q. Now, Mr. Post, when he came to your home to explain  
the promotion of Lakewood Country Club, did he have  
any pictures or brochures to show you at that time? A.  
Yes, sir. He had a brochure of a country club in Texas,  
which he indicated had been a prior venture that he had  
been involved in.

Q. At this time did Mr. Post identify his connection  
with the Lakewood Country Club? A. Yes. He gave me  
to understand that he was an investor in the Lakewood  
Country Club development and also, of course, one of their  
sales representatives.

Q. Did he identify any other associates of his in the  
Lakewood Country Club promotion at this time? A. No, sir.

Q. Now, at this time did Mr. Post explain to you different  
types of membership that they contemplated in Lakewood  
Country Club? A. Yes, sir. He described the life  
membership and the dues paying membership to me.

Did he tell you how many total members there  
521 were going to be in the club? A. There was no mention  
made, as I recall, as to the total number of members.

Q. Well, did he tell you how many life members there  
were going to be? A. Yes, sir. He indicated there would be  
approximately 200 life memberships sold.

Q. Did he tell you what the cost of a life membership  
would be? A. Yes, sir. It was \$800.00 plus the tax, which  
came to \$1,002.00.

• • • • •

532 Q. Did you notice in the bylaws a provision which authorized the imposition of a minimum spending requirement at some time in the future? A. I don't recall having noticed that.

• • • • •

533 Q. In determining, Mr. Pardee, whether or not to make application to the Lakewood Country Club, did you give some consideration to the cost of constructing the country club? A. I knew it would be a very costly venture; yes.

Q. And did you give some consideration to the cost of keeping the club in operation after it had been constructed? A. Yes, sir.

Q. Sir, your testimony, as I recall it, was that Mr. Post had said that there would be a limitation on life memberships of approximately 200. Was that the figure he stated? A. Yes, sir.

Q. What was the significance of that figure to you? A. At the time I made application when Mr. Post visited me the significance was that he indicated to me there were a limited number remaining, and at that time there had been approximately 160 or so sold, and if I desired a life membership there was a sense of urgency involved if I were to take advantage of this.

• • • • •

**Jack L. Harvey**

544 was called as a witness and having been duly sworn was examined and testified as follows:

• • • • •

562 We were, Mrs. Harvey and I, especially interested in the life memberships, a limited number of which were available.

Mr. Pickett said that there would be 150 of these, and that they would be given primarily or sold primarily to the residents in the immediate area of the country club,

that they wanted a nucleus of interested members and supporters of the club in the neighborhood.

• • • • •

570 Q. Could you tell us again how he identified himself? A. Well, he introduced himself as the—after seven years I couldn't tell you his exact words—

Q. I understand. A. I am sorry.

• • • • •

596 a witness, previously sworn, resumed her testimony further as follows:

• • • • •

599 Q. And prior to your first discussions with Mr. Allen, had you had business dealings with him? A. Yes. He had been affiliated with a beauty pageant type of thing that took place in our hotel once or twice, I believe.

Q. Would that have been 1958 or 1959? A. Right.

Q. Or 1957 or 1958? A. Yes, around that time. It is so far back I do not recall the exact years. It was prior to the Lakewood Country Club, though.

• • • • •

605 Q. Do you recall how many people were in attendance at the Valentine's party? A. If I remember correctly, I think wasn't there a big snow storm or something? I do not remember. I am sure it was quite successful but I do not remember it now.

Q. Do you recall the price per ticket? A. No, I do not.

Q. Do you recall how much the total price of the banquet was, how much the Sheraton charged the Lakewood Country Club for that banquet? A. No, I do not. But I do not think it was a dinner. I think that it was a dance, was it not? I do not recall.

Q. Do you recall the price that was charged for the dinner or dance, whatever it was? A. No, I am sorry. I do not get involved in any of that anyway, and I never pay, so I do not know.

• • • • •

609 Q. Mrs. Matthews, are these items which you mailed for the Lakewood Country Club——

The Court: Speaking of 42 and 44?

Mr. Loewy: Yes.

The Witness: Yes, they are.

By Mr. Loewy:

Q. Are you able to say from your own recollection, Mrs. Matthews, when you mailed those? A. They were  
610 mailed in the Fall, September, starting 1959.

Q. And are you able to say from memory the total number of pieces of those that you mailed for the Lakewood Country Club? A. Approximately 60,000.

Q. Are you able to say from your own recollection where you got those from, and who delivered them to you? A. They were delivered to the office by a printer, Bethesda Printing Company.

Q. Are you able to say, Mrs. Matthews, during what period are you able to say were those mailings made out for the Lakewood Country Club? A. Well, we were mailing a thousand to fifteen hundred a day, five days a week. So whatever time that took from September to complete about 60,000, a couple of months.

Q. Would the mailing have been completed some time in November? A. Yes.

Q. To the best of your recollection? A. Yes.

Mr. Loewy: I would offer 42 and 44 in evidence.

The Court: Any objection, gentleman?

Mr. Bergan: I don't have any objection to 42 or 44.  
611 I think 44 is a duplicate of another Government exhibit which already is in evidence.

The Court: Let me see it. Isn't 44 already in under another number?

Mr. Loewy: Yes, but this has the yellow slip on top designating the Bethesda Printing Company which is the reason I introduce it again.

The Court: All right, there is no objection otherwise, gentlemen? Bergan-Dyson?

Mr. Bergan: No.

The Court: All right, the record will show that Government's 42 and what number is the same number that is already in—44?

Mr. Loewy: That would be in the 70's Your Honor.

The Court: 80 I think it was. Isn't it 80?

Mr. Loewy: Number 80, Your Honor.

The Court: 44 is identical to 80 because there is a yellow sticker up on the right-hand corner.

(The documents referred to, Government's Exhibits No. 42 and 44 for identification, were received in evidence.)

By Mr. Loewy:

Did you do any other mailings for the Lakewood  
612 Country Club? A. Yes, in the spring, the following  
year. Then another one in the fall.

Q. As best you recall during what months was the spring mailing mailed? A. About April, starting about April.

Q. And ending about when, as best you recall? A. Well, until we mailed approximately 70,000 pieces I believe, at the rate of 500 a day. I think we increased it to 3,000 a day.

Q. Would you still have been mailing them during the month of June 1960? A. Well, let's see. Possibly ending then.

Q. Now I believe you said there was a third mailing? A. Yes, sir.

Q. When did that take place, the best you can recall? A. That was the following September.

Q. And how many pieces was included in that mailing? A. Approximately 75,000.

• • • • •

625 Q. Well, who precisely gave the instructions to  
626 you to make each of the subsequent three mailings, if you recall? A. Well, I wouldn't remember that. I

think it was probably Mr. Wilhite. But when I discussed it with both of them out there we went over the areas and we were just told to "go ahead." I don't know who actually told us to go ahead, though.

• • • • •

Q. I see. Subsequently there was a second mailing. Who gave you the instructions, if you can recall, to make the second mailing? A. I don't recall. I imagine it was 628 Mr. Wilhite. I don't know.

Mr. Loewy: I object.

The Court: Disregard that, ladies and gentlemen. Just what you know, please.

By Mr. Bergan:

Q. I am just asking for your best recollection. A. I couldn't remember who called me on the phone to tell me.

Q. And with respect to the third mailing who was it who gave you your instructions to make that mailing? A. I wouldn't know specifically who that was either.

• • • • •

638 Q. Was the document signed by the other party in your presence, Mr. Garis? A. I am not too sure.

Q. Well, was the application filled out at the time that Mr. Pickett and Mr. Allen were in your restaurant to verify the terms of your membership? A. I don't know.

• • • • •

650 James F. Crowley

was called as a witness and having been duly sworn, was examined and testified as follows:

• • • • •

656 The Court: Mr. Crowley, are you speaking generally now in the preparation of an ad, or are you speaking particularly to these particular ads you have before you?



In other words, who prepared the copy in respect to Government's 61 through 70, the ads you have before you? Do you know?

The Witness: Who prepared the copy of this?

The Court: Yes.

The Witness: I don't know.

670

**Paul Herbert Hockwalt**

was called as a witness and having been duly sworn, was examined and testified as follows:

688 Q. Are you able to state at this time that Mr.

Post was present at the time the discussion with respect to minimum spending was had? A. No, sir; I cannot so state.

699

**Harry A. Calevas**

being first duly sworn, was examined and testified as follows:

702 Q. Did you see any individual or talk to any individual out at the club site at that time? A. I have tried to recall, and my recollection is now that there was someone at the site. And I believe—I am not exactly sure whether there was someone at the site that referred me to an office in Bethesda, or whether I had been previously informed that the office was in Bethesda.

But in any event we left the site that Sunday afternoon and went right to this office in Bethesda. And I am not sure now whether I was sent to that office by someone on the site, or whether I had been given information prior to my going to inspect the site.

705 Q. Now at this time did Mr. Damkohler describe to you the different types of membership that Lakewood Country Club would have? A. Yes, sir.

Q. And what were the different kinds of membership? A. He indicated that you could buy either a dues-paying membership, which he called a "regular" membership. And if you bought a regular or dues-paying membership, you were supposed to pay something like three hundred and some odd dollars as a down payment or admission fee. And then you were supposed to pay something like \$12 or thereabouts each month as dues, until the club was built. Afterwards there would be some adjustment in the dues. That was my recollection.

And then he also indicated that there would be what is known as a life membership. And if you desired to buy a life membership, you would pay something like eight hundred or thereabouts dollars, plus the federal tax, 706 which would make it come to a thousand dollars. And if you bought a life membership, you would be exempt from the requirement of paying any dues.

However, he went further to insist that if I had any interest in a life membership, I must apply quickly, because there was a definite limitation of the number of life memberships that would be sold; and that there would not be—I think he used the number 200—there would only be 200 sold; and that they were nearing their quota; and that unless I applied quickly, if I had any interest in a life membership, I probably would not be able to get one of those.

• • • • •

728

**William H. Reckert**

being first duly sworn, was examined and testified as follows:

731 Q. Did the salesman at that time identify who the individuals were who were going to develop the Lakewood Country Club? A. Yes, he did.

Q. And who were those individuals? A. He mentioned—

*I only can remember the name of Allen, and I forget the other names.*

Q. You recall the name Allen? A. Yes, sir.

• • • • •

754

**Lee Maxfield**

a witness called by counsel for the Government, having been first duly sworn, was examined and testified as follows:

• • • • •

757 Q. Well, from the ad, who did you understand the promoters of Lakewood Country Club to be? A. Well, there were three people involved. I understood their initials to be P-A-P.

Q. Do you know what the initials stood for, Mr. Maxfield? A. Post and Pickett were two of them, and I do not recall the second one.

Q. Now, did Mr. Sullivan indicate that the promoters of Lakewood had any connection with the Texas Club? A. Yes, very positively.

Q. And what connection, if any, did he indicate they had with the Texas Club? A. Well, it was my understanding that the Texas Club was already in existence and it was owned by the same basic group that was then establishing Lakewood and would establish two other clubs.

Q. Now, at this time did Mr. Sullivan describe to you the various types of membership that Lakewood Country Club would have? A. Yes, I am sure he did. I am sure they

758 also were mentioned in the ad.

Q. How many total members was Lakewood Country Club going to have? A. Are you referring to total members or total life members?

Q. Total members, the combined membership as Mr. Sullivan related to you the total? A. I recall something like 11 or 12 hundred, total members.

Q. Now, did he give you a figure as to the number of life members that would be in this club? A. Yes, this was a big point. The first time Mr. Sullivan was in my home, we were told that the life membership would be limited to about 250, and that there was an extremely short number of this 250 still available. In fact, as I recall it, about a dozen.

The second trip to my home that had been raised to about 275 to 300, and that would be all.

Q. Did Mr. Sullivan say anything about dues to be paid by these life members? A. Yes, at the first meeting we discussed the dues with him for the purpose of deciding what we wanted to do, and after thinking it over, the understanding we had there would be nothing but the original  
795 membership for a life membership, there would be no other charges except for food or drink. That would be all. For those reasons, plus the fact that we would have access to the Houston Club, where we go occasionally, we decided on a life membership.

Q. Was there any discussion on either occasion that Mr. Sullivan was in your home, relating to a minimum spending requirement? A. This was never even mentioned.

• • • • •

765

#### F. Ruskin Winthrop

was called as a witness by counsel for the Government and having been first duly sworn, was examined and testified as follows:

• • • • •

766 Q. Did either you or your husband have any per-  
767 sonal acquaintance with any of these individuals  
mentioned in the ad? A. I can't quite remember,  
frankly.

• • • • •

784

James L. Nalle

was called as a witness by counsel for the Government, and having been first duly sworn, was examined and testified as follows:

• • • • •

787 Q. And do you know the name of the individual that visited you? A. Well, at that time she was a blonde lady.

Q. Do you recall her name? A. A blonde lady. I can't think of it.

Q. Well, when she came to your house how did she identify herself? A. As a representative from the Lakewood Country Club.

Q. Now, at this time did she have any material, any literature to show you relating to Lakewood Country Club? A. Yes, she did. She had a brochure with pictures of a club in Texas, Houston, I believe it was.

Q. Did she identify the name of that club in Houston, Texas? A. Well, I was under the impression that it was one of the clubs that the Lakewood people had developed and put into operation, and was a sample of what they planned to do out at Lakewood.

Q. Did she identify who the people were that were associated with Lakewood Country Club and were promoting that club? A. I can't remember that. But I was under the impression that the Lakewood people were the builders and originators. Whether that is the way I was supposed to have believed it I don't know. But that is the impression I got.

Q. Did you gain these impressions from your conversations relating to Lakewood? A. Yes.

Q. Did this describe the kind of membership Lakewood Country Club would have? A. Yes, live members, regular members, and social members.

Q. What type of membership were you interested in? A. I was interested in a life member.

Q. Did this tell you how many total members overall that Lakewood Country Club would have? A. Yes. The number was fifteen hundred at that time.

Q. Were you told by this representative how many life members there would be? A. Yes. There was two hundred.

Q. Were there any discussion were dues to be paid by life members at this time? A. Well, the life members weren't subject to any monthly payments, any assessment or  
789 additional fees except of course your current expenses. If you had meals there and bought gas and things of that nature, you could play golf, tennis, or swim, without any additional payments.

Q. Was there any discussion at this time about a minimum spending requirement? A. No, not at that time as I remember.

• • • • •

814 Q. Now, let me show you what the Clerk has marked as Defendants' Exhibit No. 15 for identification, and ask you to read through it and tell me whether you recall receiving that letter. A. I don't remember one hundred percent whether I did, but I was on the mailing list as a member and I am sure that if it was sent out, I received it.

There were so many communications.

The Court: Mr. Nalle, the question is do you remember? Just to your best recollection, do you remember receiving that letter?

The Witness: Definitely, no, sir.

• • • • •

818 Q. Had you been asked to—as a member of the club up to that point, had you been asked to vote on—or given an opportunity to vote on the installation of these new practices which the members were putting in? A. If that was in—I am sure I was if I was still an active member at that time.

Q. My question to you, sir, is do you recall? A. I don't remember exactly, no, sir.

• • • • •

872

**Sam Seeley**

resumed the witness stand and further testified as follows:

875 Q. Do you recall who presided at the meeting  
which you attended? A. No, sir.

Q. Do you remember a Doctor—excuse me—a Mr. Paul  
Rogers? A. At this time I wouldn't be able to recall the  
names of anyone nor the substance of the arguments.

• • • • •

884

**Walter C. P. Rutland**

called as a witness by the Government and, having been  
first duly sworn, was examined and testified as follows:

• • • • •

886 Q. Did the salesman tell you at that time that  
these proprietors had developed other clubs? A. I  
think so.

887 Q. Can you be certain, Mr. Rutland? A. I'm sorry  
I couldn't swear to it, but I think in a general con-  
versation, why I was interested, we had a general discus-  
sion in my office, I think about an hour, quite a lot of facts  
relating to life membership, a number of questions I  
wanted to ask. I'm sure I asked him and he replied, I'm  
sure very fully. He left a good impression on my mind.

• • • • •

915

**Henry George**

called as a witness by the Government and, having been  
first duly sworn, was examined and testified as follows:

• • • • •

918 Q. Can you tell us what those photographs were?

A. It's been a long time, sir, but I remember seeing  
pictures of the countryside where the club was to be built,  
and there were other photographs with pictures of a simi-  
lar type club in Texas.

Q. Do you recall the name of this club in Texas, Mr.  
George? A. No, I don't. I'm sorry.

• • • • •

946

**Frank Quiggin**

was called as a witness by the Government and having been duly sworn, was examined and testified as follows:

• • • • •

949 Q. What were the names of the promoters as you understood it at that time? A. Post, Allen, and PAP, I believe.

Q. Pickett? A. Pickett. Excuse me. I was thinking of that name.

Q. Did the salesman identify the promoters of Lakewood with the club in Texas? A. Yes, sir.

Q. In what way did he identify them with the club in Texas? A. This was a group of businessmen that were in the business of acquiring lease land and building country club facilities and managing them.

Q. Now at this time did you have a conversation with the salesman about the life membership that was being offered? A. Yes.

Q. Do you recall any conversation relating to the number of life memberships that were being offered?  
950 A. We asked several questions about the composition of the membership of the club and the primary emphasis was acquiring, we believed, from the conversation—there was no firm figure definitely stated, but between 250 and 300 life memberships would be sold.

So that this would provide an initial \$250,000 to get the structures underway, construction.

Q. Who else was present when the salesman was in your home, Mr. Quiggin? A. My wife and her cousin.

Q. Now was anything said to you by the salesman about the total membership that was going to be in the Lakewood Country Club? A. I don't recall that any definite figure was given.

Q. Now what was the price of the life membership to be to you at this time? A. \$1,000 plus the Federal tax.



Q. Now was there any discussion at this time about dues to be paid by the life members? A. We asked questions about the—all the items in connection with dues and nothing at that time was stated as being required other than the life membership and paying the customary house charges for use of the club.

951 Q. Well, from your conversations with the salesman, what was your understanding then of your obligations, if you were to purchase a life membership? A. Other than the payment of \$1,000 there was no obligation financially.

• • • • •  
956 Q. As I understand your testimony, you have no recollection as to whether this particular salesman, Beman, stated a figure as to the total number of members which the club would have? A. That is correct. I don't recall that was definitely stated.

Q. Do I further understand your testimony correctly that he didn't state any firm figure on limitation of the number of life members in the club? A. The information he gave us was that this would be a limited number and that—we questioned him about this and it was his impression, referring to our question, that it would be somewhere around 250 or 300.

• • • • •  
959

**Harold A. Timken**

was called as a witness by the Government and having been duly sworn was examined and testified as follows:

• • • • •

962 Q. Did Mr. Post at this time identify who the pro-  
963 moters of the Lakewood Country Club were? A. Yes.  
He mentioned himself, and, as I said, Mr. Allen.

I cannot recall at the time that he did mention Mr. Pickett's name. He may have, but I cannot recall that.

• • • • •

979 Q. Now Mr. Timken, did you attend a meeting in a civic auditorium in Rockville, Maryland, in the fall of 1960? A. Yes, I did.

Q. Can you tell us what occasioned that meeting? A. Yes. A number of the people in our community became increasingly concerned about the lack of progress in the club and no indication that the promoters or the officers were going to call an annual meeting.

We made a number of attempts by phone to discuss this with Mr. Post, Mr. Allen and Mr. Pickett.

Mr. Bergan: Excuse me, Mr. Timken. I think we are getting into hearsay area, Your Honor, when he talks about what we did and what they did.

The Court: Yes. Only what you can say yourself, Mr. Timken, as to what you did and what was said to you.

The Witness: Yes, Your Honor.

By Mr. Barnes:

Q. This meeting at the civic auditorium in Rockville was a meeting then of the membership of Lakewood Country

Club? A. Yes, it was called by a small group of us,  
980 including myself, Mr. Dave Betts, Mr. Murdock, Mr.

Hepburn, three or four others whom I cannot readily recall, with the thought of bringing as many members together as we could so we could prepare a petition or have a petition signed to Mr. Post, Allen and Pickett asking them answer certain questions that we felt we had a right to know about the progress of the club, and also we had decided that in accordance with the bylaws we would nominate a slate of Directors to be put up at the next annual meeting.

Q. Now, Mr. Betts and Mr. Murdock, are they attorneys in Rockville, Maryland? A. Yes, they are.

Q. Were they members of the Lakewood Country Club? A. Yes, they were.

Q. Now were you a part of a group that prepared a petition seeking information from Mr. Post? A. Yes, I was.

Q. And was this petition submitted to Mr. Post? A. I believe the petition was formally addressed to Mr. Rogers

as president of the Lakewood Country Club Board of Directors.

Q. Well, did you ever receive a reply from Mr. Post?

A. Yes. We received a reply I believe dated in early 981 January in which he made reply to most of the points we raised in there.

I believe that was sent, aside from—it was addressed to us as Members Committee—but I believe it was sent to all members.

The Court: January '61?

The Witness: Yes, that would be January '61. I think it was dated 12 January 1961.

• • • • •  
984 The Witness: Yes. We put our slate up and there was a meeting called by Mr. Rogers for the 27th of December, 1960.

At that meeting the management group—I refer to the management group as that which Mr. Post, Allen and Pickett supported—had a slate and we as members put up a members slate.

There was an election at that meeting by the members present and we were—our slate was completely elected and became members of the Board of Lakewood Country Club, Inc., as of that night.

• • • • •  
988 Q. Well, was Mr. Post asked about how many life members there were at that time? A. As I have to say, it's been some years, it is my recollection that he was, but I cannot specifically say I remember that.

• • • • •  
989 Q. Now, again early 1961, did there come a time, Mr. Timken, that you attended a meeting at a hotel in downtown Washington, at which any of the principles, either Mr. Post, Mr. Allen, or Mr. Pickett were present? A. Yes.

Q. Well, were all three present or just one?

990 A. Mr. Post was present, to my knowledge.

I cannot recall for a fact whether Mr. Allen and Mr. Pickett were there.

\* \* \* \* \*

995 Q. Was that the first notice that you received about a meeting of the membership? A. Yes. This is dated November 21, 1960, and in lieu of a meeting this said that Mr. Rogers would be at the club house locker lounge and answer questions of members between November 29 and December 2, 1960.

Q. Did you attend such a meeting at the locker of the club house? A. Yes, I attended one of the afternoons there.

Q. Was Mr. Rogers present at that meeting? A. Yes, he was at the time I was there, yes.

Q. Were either Mr. Post or Mr. Allen or Mr. Pickett present at that meeting? A. I do not think any of them were present at the time I was there.

Q. Now I am going to show you Government's No. 41, Mr. Timken, which is in evidence and ask you to look at that, sir. A. (Examining.) Yes.

Q. Have you seen that document before or a copy of it? A. Yes, a copy of it was sent to me as a member of the club.

Q. This was a notification of a meeting of the membership at BCC High School? A. Yes. This was notification that a membership meeting would be held on the 27th of December, 1960.

Q. From whom did you receive notification? A. Well, it's signed by Mr. Paul V. Rogers, the president.

Q. Was this after the meeting that had occurred at the Rockville Civic Auditorium? A. Well, this is undated, so I can't recall just when it came out. It would be my—

Q. Well, if you know. A. My recollection is that we received this in early December of 1960.

Q. At this time had you and other members submitted a list of questions to Mr. Post for answer? A. Yes.

\* \* \* \* \*

997 Q. Mr. Timken, I show you what has been marked as Government's 153 for identification, and ask you to look at it, sir. A. (Examining.)

Q. Are you familiar with that document? A. Yes, I am.

Q. Did you have a part in preparing that document, Mr. Timken? A. Yes, I did.

Q. Was that document circulated to the membership of the Lakewood Country Club? A. Yes. This was distributed at the meeting of December 27, 1960, to all members who were present.

Mr. Barnes: Your Honor, I would now offer Government's 153 into evidence, which has been shown to counsel for defense.

998 Mr. Bergan: No objection, Your Honor.

For the record, it is the same as Defendants' 15 for identification.

The Court: Very well.

Mr. Dyson: No objection, Your Honor.

The Court: Government's 153 is received in evidence.

(Government's Exhibit No. 153, titled Members Committee, Lakewood Country Club, December 27, 1960, received in evidence.)

Mr. Barnes: Your Honor, with leave of Court, I would like to read a portion of Government's 153, and if Mr. Bergan desires, he can read the balance of it.

The Court: You read what you wish and—

Mr. Bergan: Your Honor, may we come to the Bench?

The Court: Come to the Bench.

(Whereupon counsel approached the Bench and the following proceedings were held:)

Mr. Bergan: Your Honor, this series of letters which Mr. Barnes is identifying I think are fairly important and I think that in order to get it in context the entire of them ought to be read to the jury at the same time, rather than have Mr. Barnes read a couple of paragraphs and me come

back after lunch and read a couple more paragraphs  
999 of the same letter.

The Court: We will do it differently, Mr. Barnes. If you don't want to read all of it right now—and you can read everything from the beginning to the end——

Mr. Bergan: I think that they should be read in sequence.

The Court: Frankly, the jury has to have the full picture.

Now, if you don't want to read it all, you read what you want and as soon as you finish reading what you want stop, and then I will let Mr. Bergan read what he wants, so the jury will get the whole picture.

Mr. Barnes: All right, Your Honor.

(Whereupon counsel resumed their places at the table and the following proceedings were held:)

Mr. Barnes: With leave of Court, I will read the first portion, Your Honor.

This is a letter dated December 27, 1960, on the letterhead of Members Committee, Lakewood Country Club. It is addressed: Dear Fellow Members:

“On December 8, 1960 a group of over 300 members of the Club met at the Rockville Civic Auditorium because of their grave concern regarding the management of the Lakewood Country Club.  
1000

“At this meeting a petition was signed which requested the President to call a meeting of the general Club membership to answer the following questions:

“1. Report of all agreements between Lakewood Country Club, Inc. and any other person, firm or corporation now in existence.

“2. Review of all past business transacted by Lakewood Country Club, Inc.

“3. Review of all obligations of Lakewood Country Club, Inc., of any nature.

“4. Report of membership of all classes and availability of the list of members.

"5. Report of plans for future financing and future obligations of Lakewood Country Club, Inc.

"6. Report of financial status of Lakewood Country Club, Inc. and status of payment of excise taxes to the United States Government."

The letter is signed by David E. Betts, with the initials "per E.S." and David E. Betts is styled as Chairman, Steering Committee.

That is all I am reading now.

1001 The Court: Mr. Bergan, do you wish to read any of it now?

Mr. Bergan: Yes, Your Honor. I would like to read the remainder of the letter.

The Court: You may do so. Is that an exact copy of what the Exhibit is?

Mr. Bergan: I will read from Mr. Barnes' copy to make doubly sure, Your Honor.

The Court: All right.

Mr. Bergan: Picking up from where Mr. Barnes left off, I will start down here:

"We are in hopes that these questions will be answered here tonight, since the President of Lakewood Country Club has not responded to the petition sent him.

"Also, we question the validity of the voting proxies requested by the officers of the Club for this meeting in view of Article VII, Section 2, of the Bylaws which require that 'all matters shall be decided by a majority of the members present.'

"In the interest of assuring that the Club affairs will be managed in the best interests of its members,

1002 a 'Member's Slate for the Board of Directors' has been nominated in writing by over fifty members in accordance with procedures of Article VI, Section 4(b) of the Bylaws.

"We ask that you cast your vote for the following named persons at tonight's meeting."

There follows a list of names:

"William A. Hepburn; Membership No. H-11; Residence, Hunting Hills, Md.; Business Affiliation, Engineer, Atomic Energy Commission.

"Martin Biles; Membership No. B-73; Residence, Kensington, Md.; Physicist, Atomic Energy Commission.

"Frank E. Wall, Jr.; Membership No. W-29; Chevy Chase, Md.; Public Relations, IBM.

"B. J. Tennery; No. T-2; Rockville, Md.; Assoc. Dean Law School, American University.

"Harold A. Timken, Jr.; T-5; Potomac High Lands; Md.; Asst. to President and Officer, Washington Technological Associates, Inc.

"James H. Murdock; M-24; Glen Hills, Md.; Lawyer, Betts, Clagg and Murdock.

"Walter R. Eull; E-4; Hyattsville, Md.; Manager, Calvert Credit Corporation.

1003 "Frank E. Williams, Jr.; W-12; Rockville, Md.; President, Rockmont Chevrolet.

"George Estok; E-29; Glen Hills, Md.; Management Consultant.

"These men are members interested in serving your interest in the Club."

The words "your interests" are underlined.

"We urge your support."

It is signed, "David E. Betts, Chairman, Steering Committee."

And at the bottom following a dashed line:

"Please assist your committee in compiling a complete list of members so I may keep you informed."

Then there are blanks for Name, Street Address, City, Home Phone, Business Phone, Membership Classification and No., with a notation "Mail to P. O. Box 426, Rockville, Maryland."

By Mr. Barnes:

Q. Mr. Timken, if you know, were all the people named on the proposed slate of the members at that time paid up



members of the Lakewood Country Club? A. To the best of my knowledge they were, yes.

• • • • •

1022 Q. Do you recall what other members of the newly elected board of directors were also present? A. I remember distinctly that Mr. Hepburn was there, Mr. Estok, Mr. Biles, and Mr. Murdock. Beyond that I can't recall specifically.

• • • • •

1023 Q. Referring you again to the meeting of the membership at the Bethesda-Chevy Chase High School on December 27th, was a vote taken at that meeting to elect a board of directors? A. Yes.

Q. Would you recall offhand how many total members were there, Mr. Timken? A. No, I am sorry, I can't recall. But the auditorium was filled. It would be my observation that there were probably maybe 600 people there.

1024 Q. And would you have any recollection as to what proportion of those people present voted to elect the new board of directors of which you were a member? A. It is my recollection that it was rather overwhelmingly in favor of the membership slate of directors.

• • • • •

1036 Q. And was either Mr. Post or Allen or Pickett present? A. I know Mr. Post was present. I think Mr. Allen and Mr. Pickett were present. But I cannot for a fact recall the latter two being there.

• • • • •

1046 Q. Now, as I recall your testimony this morning, the next event that occurred was that Mr. Post came to Mr. Marsden's home, I believe, and there were several other people present. At whose invitation did Mr. Post come to Mr. Marsden's home? A. Well I can't recall exactly. In fact, I think Mr. Simmons introduced us to Mr. Post. If I am not mistaken, I think my first meeting with Mr. Post was at a Rockville chamber of commerce lunch-

eon, where he introduced us. I think Mr. Strong, Mr. Marsden and myself probably extended the invitation to Mr. Post to join with us—but with Mr. Simmons being the intermediary.

• • • • •  
1066 Q. Mr. Post spoke at that zoning hearing, did he not? Both Mr. Post and Mr. Allen spoke at that zoning hearing, did they not, Mr. Timken? A. I know that Mr. Post did. I remember that distinctly. I can't say for a fact that I recall Mr. Allen speaking there.

• • • • •  
1069 Q. The meeting in the high school auditorium convened at approximately eight o'clock? A. I would assume it convened at about eight. I don't recall exactly.

Q. And do you recall that Mr. Rogers opened the meeting and possibly introduced himself as the president of the club? A. I would assume so; but I cannot say I recall that was the first item on the agenda. But that seems logical.

Q. Now do you recall whether Mr. Rogers continued to preside over the meeting for its entirety? A. I cannot recall whether that was so or not.

Q. Do you recall whether there came a time during the course of the meeting when Mr David Betts began to preside? A. I don't know that he presided. I think  
1070 that he had the floor at some time.

Q. You don't have a recollection that he in fact, later in the evening, presided over the remainder of the meeting? A. No, I cannot recall that was so.

• • • • •  
1156

**M. L. Parker**

a witness called by counsel for the Government, having been first duly sworn, was examined and testified as follows:

• • • • •

1158 Q. Do you recall with whom you talked at that office, sir? A. I cannot remember.

• • • • •  
Q. Now, at this time did this individual identify who the people were who were promoting Lakewood Country Club? A. I do not remember this as such, no, sir.

• • • • •  
1167 Q. I see. Now, was it explained to you or did you ever at any time come to know that Mr. Post, Mr. Allen and Mr. Pickett would manage and have control of Lakewood Country Club? A. That was not discussed.

Q. It was never discussed with you at any time? A. I am not sure of this, sir.

Q. Your answer is that you can't recall then? A. Right.

The Court: I am sorry, I didn't get the first part of it.

Mr. Dyson: I asked him if at any time it was explained to him or if it was his understanding that Mr. Post, Mr. Allen and Mr. Pickett were to manage, operate and control Lakewood Country Club. I understand his answer to be that he could not recall.

The Witness: I cannot recall whether it was or was discussed.

• • • • •  
1172

#### Henry Ator

was called as a witness by counsel for the Government and having been first duly sworn, was examined and testified as follows:

• • • • •  
1202 Q. And you think it not unlikely that it was at one of these meetings that you determined, or ascertained how to locate Mr. Post for your subsequent telephone call? A. Well, it could have been. I do not recall.

1203 Q. You have no recollection? A. I have no recollection how I got his number.

• • • • •

1204 Q. I am going to refer you, sir, to the third full paragraph on page 5 and ask you to read that to yourself, sir. A. Do you want me to read it aloud.

Q. No, no, to yourself, just read it to yourself, sir. A. Yes, sir.

Q. Now, in 1961, is it fair to say that your recollection of events which took place in that year was better than it is now, in 1966? A. Of what happened then?

Q. Yes. A. Oh, certainly.

Q. Does this refresh your recollection that what the young lady said when she answered the telephone, the first time you called was "Country Club Developers"?

A. That is right. That is what is there and that would come nearer being right than what I remember now.

\* \* \* \* \*

1235

#### Robert Elder

was called as a witness by the Government, and having been duly sworn, was examined and testified as follows:

#### Direction Examination.

By Mr. Loewy:

1236 Q. State your name, please sir. A. Robert Elder.

Q. Is that E-l-d-e-r? A. That is correct.

Q. Where are you employed, Mr. Elder? A. I am with Thomas E. Carroll & Son, landscape contractors.

Q. What is your occupation or profession, sir? A. Turf agronomist.

Q. What does a turf agronomist do, Mr. Elder, or what do you do as a turf agronomist? A. Well, we contract the construction of golf courses, air fields, football fields, all turf areas.

Q. What is your educational background in that field, Mr. Elder? A. I am a graduate of Penn State University in turf agronomy and ag engineering.

Q. Did you have anything to do with building the golf course at the Lakewood Country Club? A. Yes. We constructed an 18-hole course for Lakewood Country Club.

Q. What did you personally do in connection with that job? A. Well, I was responsible for the actual construction and construction supervision of the complete course.

Q. What was the first step, if you recall, Mr. Elder, in construction of the Lakewood Country Club golf course? A. Initially we developed a turf nursery which was the grass to be used for the putting greens, 18.

Q. When was that done, sir? A. This was in September of 1959.

Q. Was there a charge for that? A. Yes, there was. Initial contract was for \$12,000 for the development of the turf nursery.

Q. Do you recall the contract price for the entire golf course? A. The complete course was \$165,000, which included the development of the turf nursery, the initial contract would be null and void, the \$12,000.

The Court: What was the last of that?

The Witness: The contract for the golf course, which was \$165,000, included the cost for the development of the turf nursery.

By Mr. Loewry:

Q. Do you know Mr. Post and Mr. Allen and Mr. Pickett, the promoters of the Lakewood Country Club? A. Yes, sir.

1238 Q. Did you deal with them in connection with the contract for the golf course there? A. Yes, sir.

Q. Did they ever, Mr. Elder, consult with you as to how many members a golf course such as the one that you were agreeing to build would accommodate? A. They asked on occasion the number of golfers that a regulation course would accommodate.

Q. Did you tell them? A. I think at the time I told them between six and eight hundred members.

The Court: How many hold course would that be?

The Witness: 18-hole course.

By Mr. Loewry:

Q. Mr. Elder, did your company complete that golf course? A. Yes, sir.

Q. Did you complete the golf course for the contract price? A. Yes, sir.

Q. Mr. Elder, do you recall when and under what circumstances your first piece of construction equipment was brought to the Lakewood Country Club golf course?

1239 A. I believe we commenced construction of the course in October of 1959.

The first unit we moved in was—they wanted to get pictures for publicity when we commenced work.

Q. What was the first unit you brought in for these pictures? A. That was a D-8 caterpillar tractor.

Q. Is that commonly known as a bulldozer? A. Yes, sir.

• • • • •

1250 Q. Did you develop a grass nursery or a turf nursery adequate to cover the entire 18—the greens on

1251 the entire 18-hole golf course? A. Yes, sir.

Q. And the putting green, the practice playing green, perhaps? A. Right. I don't remember whether we had a practice green or not.

• • • • •

1255 Q. Did there come a time when you recommended that additional acreage be acquired at the Lakewood Club? A. I think in the course of the design Mr. Ault came up short or needed some more area to develop the complete 18.

I don't recall whether he was making improvement in the design or not having room for the complete 18 or not. I don't recall just how it was.

• • • • •

1262 Q. Mr. Elder, before the recess we were discussing the maintenance and upkeep of the golf course, and

I have one question along that line which I neglected to ask you before the recess. Do you recall working with Mr. Oulla, whom you have identified before, in the preparation of such a maintenance and upkeep estimate for the Lakewood Country Club? A. I don't recall whether I did or not.

• • • • •

1264 Q. Do you have a recollection of what organization the contract for the work at the Lakewood Country Club was with? A. I am not positive. I think it was just Lakewood Country Club.

Q. Is it possible that your contract was with Country Club Developers, Inc.? A. It could have been. I don't recall the exact name.

• • • • •

1277

**Mr. Eugene Hooper**

was called as a witness by and on behalf of the Government and, having been first duly sworn, was examined and testified as follows:

• • • • •

1279 Q. When did you do that work? A. I don't remember the exact dates. It's been a long time.

• • • • •

1283 Q. And did you observe the two signatures on that check? A. L. W. Pickett and Bill Allen.

Q. Were those signed in your presence, Mr. Hooper? A. I don't remember.

Q. Now, Mr. Hooper, referring to Government's 162, the contract for construction, do you recall how you figured your profit on that contract? A. If I remember, that is on a cost plus 5%.

Q. Cost plus 5%, that is how you figured your profit in coming out with your bid? A. Yes, sir.

1284 Q. In order to do that, isn't it first necessary to know what the cost is? A. Sure.

Q. Did you include anything for overhead? A. I am not sure.

• • • • •

1313

**Maury Fitzgerald**

was called as a witness on behalf of the Government, was duly sworn, and testified as follows:

• • • • •

1321 Q. Then can you fix the approximate time of that phone call? A. No, I couldn't. It would be a little hard after all these years.

Q. Let me see if I can help. Can you fix it in point of time with this exhibit which was shown you earlier? This is Government's Exhibit No. 61, the page from the Washington Post, on July 26 of 1959, in which your name  
1322 does appear. Can you, using that as a point of reference, fix the approximate time in which you called Holman? A. No. All I can remember is that after, it appeared once or twice when I called Holman the first time.

Q. Yes, sir. A. I can't recall exactly.

• • • • •

1351

**Dorothy O'Neill**

was called as a witness on behalf of the Government, was duly sworn, and testified as follows:

• • • • •

1356 Q. Did you observe while you were there letters going out with someone's signature over the words "Membership Committee?" A. I'm sure I don't recall Membership Committee.

• • • • •



Q. Does that refresh your recollection as to whether or not you had seen letters signed by the Membership Committee? A. This was a form letter we sent out, right.

Q. I see. Who was the Membership Committee? A. I don't recall.

• • • • •

1357 Q. Was there a Membership Committee? A. To my knowledge, as I recall there was, but I couldn't tell you who they were.

• • • • •

Q. Who was the Screening Committee? A. I'm sure this I don't know.

Q. Was there a Screening Committee, to your knowledge? A. To my knowledge, I still don't know.

• • • • •

1378 Q. Now, Mrs. O'Neill, do you recall how many copies of that you made at the time that you filled it out originally? A. As I recall, an original and one carbon.

Q. And that appears to be the carbon. Now what happened to the original and what happened to the carbon, if you recall? A. I really don't recall.

• • • • •

1394 Q. Then, cash received, forty-seven, and following that, loaned. To what does that have reference, if you know? A. I don't remember, I really don't.

Q. Did there come a time while you were in the employ of the Lakewood Country Club when a District of Columbia bank made arrangements to finance membership applications? A. I'm sorry, I don't recall.

Q. Do you have a recollection that during the time that you were employed at the Lakewood Country Club that some of the applications for regular membership included credit information which was forwarded to a bank? A. I just can't recall anything about the bank or the loans.

• • • • •

1401

**Thomas Graham Peters**

was called as a witness on behalf of the Government,  
1402 was duly sworn, and testified as follows:

\* \* \* \* \*

1404 Q. At that time did he have an application blank  
with him? A. As I remember—my memory is a little hazy  
as far as this thing is concerned, but I think he had  
1405 this with him at that time.

Q. But that document does bear your signature,  
does it not, Mr. Peters? A. Yes, I think so. It certainly looks  
like it.

\* \* \* \* \*

1427

**Mr. Walter Shultise**

was called as a witness by and on behalf of the Government  
and, having been first duly sworn, was examined and  
testified as follows:

\* \* \* \* \*

1431 Mr. Loewy: The first item is a letter dated No-  
vember 23, 1960, addressed to Mr. James L. Dixon.

By Mr. Loewry:

Q. Incidentally, Mr. Shultise, who is Mr. James L.  
Dixon? A. Mr. Dixon is the broker with whom I was as-  
sociated.

Q. In November of 1960? A. That is right.

Mr. Loewy:

[Reading] "1144 - 18th Street, Northwest, Washington,  
D. C.

"Dear Mr. Dixon:

"I have written you today outlining generally the terms  
and conditions under which I and my associates would dis-  
pose of our Lakewood interests to Donal Chamberlin's  
group.

"In the event this transaction is consummated, we will pay you a commission of \$50,000.00 for handling it.  
 1432 Should terms be necessary to conclude the transaction, and the time of such terms is less than three years, this amount will be paid you 50% on settlement and 50% within one year. On terms of more than three years, a mutually agreeable arrangement shall be made.

"This amount of commission is to be paid you even though the final price shall vary from the proposal sent you herewith.

"Sincerely yours,

"Bill M. Allen,  
 President."

And then in the corner: [Reading] "BMA:ask" and "Enclosure".

Then there is a letter attached.

[Reading]

"November 23 1960.

Mr. James L. Dixon  
 1144 - 18th Street Northwest  
 Washington, D. C.

"Dear Mr. Dixon:

"Following our discussions with you relative to a sale by us of our Lakewood interests, my associates and I have determined as follows:

"1) Using the present membership as a basis for calculation, and the experience of our general manager, the net income for the year for the Club should be  
 1433 \$10,000.00 per month. This figure would include all income, dues, food, golf, etc., and deducting therefrom all expenses.

"2) The original value of the acreage is immaterial for the purposes herein, but the option price at which we may acquire it is \$450,000.00 for some 161.335 acres is approxi-

mately \$200,000.00 below its present value, all of such increase being occasioned by the Club's location.

"3) During the next several months leading to conclusion of our membership campaign, we expect to sell some 700 additional memberships. The average price to be obtained is \$800.00 which would entitle us under our contract for compensation to some \$168,000.00 (30% of \$560,000.00).

"4) To date, there has been expended at the Club some \$65,000.00 for facilities and there is some \$300,000.00 *more* to be paid to complete the Clubhouse."

Mr. Bergan: Excuse me. The word "more" doesn't appear there

Mr. Loewy: I am sorry. It doesn't.

[Continuing to read]

"Membership Receivables are about \$70,000.00 and should liquidate outstanding obligations.

"5) A sale by us of a-1 Lakewood interest would encompass the transfer of the following:

"A. All stock in the Lakewood Management 1434 Management Corporation, our managing company.

This company is the 'Operator' under management agreement.

"B. All stock in PAP, INC., our land company. This company is the 'lessee' from Glen Hills Club Estates, Inc., of 161.335 acres, and has the option mentioned above. This ground has been sublet to the Lakewood Country Club, Inc. The other assets of PAP, INC., are described below. It is assumed for this part, only the 161.335 acres are hereby to be included.

"C. An assignment of the lease on 36.9524 acres presently under lease from Guy Carter, et ux, and on which some of the Lakewood golf course is built. This lease is for 20 years with an option to renew for an additional 20 years.

"D. A cancellation by us of our commission contract for sales of memberships, and including a statement that no amounts are due.

"6) Taking into consideration all of the above factors, and recognizing that this type of operation does not have a yardstick for measurement of value, we have set a price for the entire interest at \$750,000.00.

"PAP, INC., also owns at the present time some 202.6863 acres which adjoin the Club. Some 10 acres of this are used for the golf course. A contract for sale of 190 acres of this ground has been received and ratified. It has a contingency in it which provides that the purchaser 1435 may withdraw from the contract if he is not able to renegotiate the second trust by December 14, 1960. If this contract goes through, PAP, INC., would also convey the golf course acreage as a part of the transfer of the Lakewood interests.

"In the event that the above contract does not go through, we would be willing to sell the entire tract to the purchaser of the Lakewood interest or retain it, transferring only the golf course acreage.

"Supporting data, detailed information, etc., can be furnished upon request and we assume that due to the delicacy of the situation, this matter and all information furnished with respect to it will be held in the strictest confidence.

"Sincerely yours,"

Signed "Bill M. Allen" and under that typed  
"Bill M. Allen, President."

• • • • •  
1444

**Mr. William A. Hepburn**

was called as a witness by and on behalf of the Government and, having been first duly sworn, was examined and testified as follows:

• • • • •  
1450 Q. Now, were life members, as Mr. Allen described them, to pay any dues? A. No, sir.

Q. Were they to be subject to any assessments in the future? A. No, sir.

Q. Were they to have any financial obligation of a steady or continuing nature whatever, according to what Mr. Allen told you? A. No, sir.

Q. Did you or did Mr. Allen broach the subject of a minimum spending requirement? A. Yes, sir, we did.

Q. In connection with the minimum spending requirement, did Mr. Allen say there would or would not be one for life members? A. He said that there would not be one.

• • • • •

1452 Q. I see. Now, following this conversation, Mr.

Hepburn, did there come a time when you did receive a set of bylaws of the Lakewood Country Club through the mail? A. Yes, sir, I did.

Q. How long thereafter, if you are able to say? A. I would say it would be of the order of about six months.

Q. Now, Mr. Hepburn, directing your attention now to the spring of the year 1960, do you recall whether or not the Lakewood Country Club clubhouse was under construction at that time?

A. Yes, sir, it was.

• • • • •

1462 By Mr. Loewy:

Q. I think before the recess, Mr. Hepburn, you had testified that in August or September of 1960 you noticed construction had stopped, and that became the topic of conversation in your neighborhood; and that Mr. Allen was notified about the topic of conversation, about that being the topic of conversation in your neighborhood. I think you testified it was on a Sunday morning that this happened. Now would you state, for the Court and jury, from where that call was placed, if it was a phone call. A. This was from the home of Mr. J. Strong, who is an adjacent neighbor of mine, or was at that time.

Q. What does Mr. Strong do for a living, if you  
1463 know, sir? A. He is the vice president of the Wyatt Corporation, which is an actuarial corporation.

Q. Was it a phone call that was placed to Mr. Allen? A. Yes, it was.

Q. Who else was present at J. Strong's house at the time this phone call was placed? A. Mr. David Betts, myself, Dr. Biles, and J. Strong. I think that was the group.

Q. Who is Dr. Biles? A. Dr. Biles is an atomic physicist with the Atomic Energy Commission, and at that time he was in our operational safety office. At present he is the scientific attache at the Embassy in Paris.

The Court. How do you spell his name, sir?

The Witness. B-i-l-e-s, sir.

By Mr. Loewy:

Q. And who is the Mr. Betts that you mentioned? A. Mr. Betts is a lawyer in Rockville. He is the senior partner of Betts, Clogg and Murdock.

Q. And the Murdock you mentioned, is he the Murdock in Betts, Clogg and Murdock? A. This is correct.

A. And do you have—

The Court. Just a minute. Murdock wasn't there that day, was he?

1464 The Witness. No. I did not testify that he was there.

By Mr. Loewy:

Q. Do you have a business associate or a co-worker named Nordlinger? A. Yes. This is Mr. Samuel Nordlinger.

Q. First of all, was he there that day? A. No, he was not.

Q. Now, who placed the phone call to Mr. Allen? A. Mr. Betts.

Q. Do you recall whether or not he called Mr. Allen immediately, or did you call some others first? A. No, sir. We started with Mr. Rogers, and went through a rather lengthy list of what we understood were the officers and the gentlemen promoting the club.

Q. Did you call Mr. Post? A. We called Mr. Post's home; and Mrs. Post said Mr. Post was not at home.

Q. And where did you call Mr. Allen? A. At his apartment in Arlington Towers, in Virginia.

Q. And did you reach Mr. Allen? A. Yes, we did.

Q. Who was on the phone primarily, speaking 1465 with Mr. Allen? A. Mr. Betts.

Q. And was anyone on an extension? A. Not initially, no.

Q. Did there come a time when someone picked up an extension phone in another room? A. Yes, sir; that's right.

Q. And was that you? A. It was Mr. Strong, in whose house we were; and he held the phone in a position so that we could both listen to the conversation—myself and Mr. Strong.

Q. During the course of that conversation, and within your hearing, was Mr. Allen asked about the number of life members that there were in the club? A. Yes, sir; he was.

Q. As best you recall, what was asked of him and what did he say? A. In this connotation, or the whole conversation?

Q. Just at this time in the connotation of the life memberships, if you please. A. He was asked how many life members there were. And he said that he was not sure at this particular time, but there certainly were not more than 150.

Q. Did you ask him how many total members he 1466 thought there were? A. Yes. That was the original question.

Q. I see. And what did he say in answer to that question? A. At that time there was no more than seven hundred.

Q. Now did Mr. Betts, within your hearing, ask Mr. Allen about obtaining a list of the members of the club? A. Yes, sir; he did.

Q. And what did Mr. Allen answer to that, if he answered? A. He said that the policy was not to issue a membership list, because they did not want to subject the members to a lot of junk mail advertisements.



Q. What did Mr. Betts say to that? A. Mr. Betts said that he had reached the time in life where a little bit more junk mail wouldn't bother him; so he would appreciate getting a list of the membership and he thought the other members would also.

Q. Was the matter of a meeting, an annual meeting of the membership, mentioned to Mr. Allen in the course of this conversation? A. Yes, it was.

Q. And what was Mr. Allen's answer to that, if you recall? A. Essentially that they had planned the annual meeting; but that there were other things, and they were  
1467 very busy, and planned to do first things first.

Q. Did Mr. Allen suggest anything in lieu of a membership meeting? A. Yes, sir; he did.

Q. What did he mention in that connection, if you recall, sir? A. He mentioned that Mr. Rogers, that the plans were for Mr. Rogers to come to the club and make himself available to the membership, to those of the membership who had specific questions, and that he would be very glad to answer them.

• • • • •

1470 A. The main purpose of this meeting was to compare notes on what the problems seemed to be at Lakewood Country Club, and what we, as interested members and members of the community, might do to help.

Q. And did you compare notes at that meeting? A. Yes, sir; we did.

Q. And was it decided at that meeting that another meeting should be held? A. Yes, sir.

Q. And was that meeting held? A. Yes, sir; it was.

Q. And where was that held, if you know, Mr. Hepburn? A. That was held in the Rockville Civic Center auditorium.

Q. Are you able to say, Mr. Hepburn, about how many people attended that meeting? A. Approximately three hundred, I would say.

1471 Q. And what was done at that meeting, at the Rockville Civic Center? A. The previous group that

I mentioned to you had compared notes, and we had found that there was a similarity of concern of lack of communication between the people who seemed to have the information that we wanted concerning what was the status of the club and what was the future of the club. And it became apparent that each of the men at the meeting in Mr. Betts' office was representative of possibly 10 to 20 other people. And we thought that it would probably be a good idea to get the rest of the group together and discuss how best to get the information which had not been forthcoming to that time. And it was to this end that by word of mouth the word was passed that it seemed to be a good idea to hold this meeting.

Q. And was a committee of any kind elected at that meeting? A. By a voice vote the group which was there ratified the actions that we had done to date. And it was decided that there was no need for an election or a vote or anything like this; but that the smaller group was to continue to try to reach a rapport with the group that was developing the club, and to obtain some specific information.

1472 Q. And— A. This—excuse me. This group was added to slightly, because there was a lot of conversation about what could be done to help. And offers of funds were actually—there was no collecting of funds or anything done there. But what was done, it seemed that—

Q. Just a moment, now. If I understand you now, did people volunteer to contribute? A. Yes, from the audience; this is right.

Q. I see. But the group would not accept the contributions at that time? A. This is correct. That's right, sir.

Q. I see. A. One thing that—I started on this trend; excuse me—we then put another gentleman on the group, who was a certified public accountant.

Q. And did he volunteer to join your group? A. Yes, he did.

Q. And who was he? A. He was the deputy comptroller of the Atomic Energy Commission. And I am embarrassed

that I can't remember his name right at this time; but I can supply it for you. He is a very good friend of mine, and I am embarrassed that I can't remember his name.

Q. Were all the people who were elected at this 1473 meeting life members of the Lakewood Country

Club? A. No, sir; they were not. There were some life members and some regular members.

Q. At this meeting was any attempt made or was it determined just how many people who were there were life members? A. Yes. This was done with a serious vein. But when it turned out that almost the entire audience stood up, it became a facetious matter. But as a matter of fact I would say that of the group that was there, possibly 90 per cent of them were life members.

Q. Now, that group that came out of there, after being elected or endorsed by the people who were at this meeting, did they call themselves anything in particular? A. There was a name applied to this by someone from the audience, and which I guess it stuck. It was known as the "steering committee."

Q. And after this meeting at the Rockville Civic Center, did the steering committee go somewhere else to meet? A. Yes, sir; they did. As I recall, we went back to Mr. Betts' office again.

Q. And, as you recall, what did you do there? A. We discussed the method of reaching a communication with these gentlemen. Our problem seemed to be that we could 1474 not express our concern properly about the fact that we had a great number of people who had large, different kinds of abilities. And we felt that if we were able to help them, we could possibly solve the problem which seemed to be stalling the club's progress.

Q. What efforts had been made to communicate this to the promoters in the past; and, in so far as you know, in what way or why were they unsuccessful?

Maybe that's a bad question.

How had communications broken down, that you know of? A. Well, I guess you can't say they had broken down, because they never really were established. We started out getting mailings—I believe the document was known as "Fore"—and it did not have specific information, like the number of life members, when was the annual meeting going to be held, and these things. And initially—and I'm speaking in retrospect now.

Q. Well now, you mentioned that "Fore" didn't contain the number of life memberships, nor the date of the annual meeting. Had inquiry been made about those subjects—of course in addition to your individual conversation with Mr. Post the previous spring? A. Yes. This is what I was attempting to say, that it became obvious after all the 1475 discussions, including these three hundred people, that there had been similar kinds of parallel requests for information from various other people there, with the same result, some of whom had talked with someone. But there had not been any establishment or giving of answers to these questions.

Q. Was one of the methods of communications that you decided upon at Mr. Betts' office, after the civic center meeting, the preparation of a petition of some kind? A. Yes, this is correct.

Q. And did all those on the steering committee participate in the preparation of the petition? A. Yes, sir; that's right.

Q. And was it signed? A. I am not—let me say it was agreed to. Now as to whether it was signed or not I could not answer that question.

Q. Do you know whether or not it was communicated to the promoters? A. Yes, sir; it was.

• • • • •

1500 Q. Mr. Hepburn, I believe you testified that you saw two leases, one between PAP, Inc. and Marvin Simmons, and another between PAP, Inc. and the Lakewood Country Club. And my question was, I believe,

whether or not you notice any differences between these two leases, and whether you mentioned any differences which you might have noticed to Mr. Post at this time.  
A. Yes, sir; I did.

Q. Now would you tell us, please, what you said 1501 to Mr. Post, and—well, what you said to Mr. Post, first of all, as best you recall. A. I said to Mr. Post that the two leases were different in their time dependency; that the least between PAP and Simmons was a lease which ran for a significant period of time, into the 1980's; and that the lease on the land with PAP and Lakewood Country Club just ran for three years, a considerable portion of which had gone on, and this meant re-negotiation.

Q. And what did Mr. Post say about that, if you recall? A. Mr. Post said this was no problem; that at the right time PAP, Incorporated would negotiate in good faith, and that there would be no escalation of the costs associated in this area.

Q. Was there anything else that you noticed of a nature different between the two leases which you called to Mr. Post's attention? A. I am not sure I understand the question.

Q. Did you notice on these leases what the price, the rental price, was? A. Oh yes. There was a considerable difference in price, by several orders of magnitude. And I raised the question of the equity of this. Mr. Post's 1502 reply was that, well, they needed to make some money, and this was one of the ways where they were making the money.

• • • • •

1621

**William Hepburn**

resumed the witness stand, having been previously duly sworn and was further examined and testified as follows:

• • • • •

1652 Q. And you are unable to fix for us the—you  
are unable to fix for us whether your wife's call to  
1653 the office of the Lakewood Country Club was before  
or after the decision by the Zoning Board? A. That  
is correct.

• • • • •  
1658 Q. Now are you able to identify any of the  
1659 people to whom you spoke at that—on any of those  
occasions? A. The one gentleman that I can iden-  
tify, I am not sure I could identify him now, but I have  
a vague mental picture of him, was a Mr. Wilhite.

• • • • •  
1696 Q. For the change of zoning. Let me show you  
what has been marked as defendants' exhibit num-  
ber 28 for identification. A. Yes, my testimony was I  
did not recall signing it.

Q. Now, does this refresh your recollection that you  
did, in fact, sign a petition to accompany that application?  
A. Yes, sir. This is my signature.

• • • • •  
1704 Q. In addition to yourself, who do you recall being  
present at that meeting? A. That is rather a tall or-  
der because there were a large number of people. Let me  
say, first of all, that Mr. Post was there. Then there were a  
number of the advisory board. And I couldn't say whether  
all of the board of directors were there, but it was a  
large group.

Q. Well— A. I can tell you who I specifically remem-  
ber being there.

Q. If you would, please. A. I recall that Mr. Post  
was there. I, of course, was there. Mr. Estok was there  
and Mr. Brownell. And I have difficulty here. I am not  
sure whether his name is Senator Westland or Eastland.  
I believe it is Westland.

Q. There is a Senator Eastland and a Congressman  
Westland. A. I guess it was Congressman Westland. Ex-

cuse me, sir. And there were several others of the board of directors. I can't recall them.

• • • • •

1772

**Joseph P. Kost,**

being first duly sworn, was examined and testified as follows:

• • • • •

1789 Q. Did you ever meet with Mr. Post or Mr. Allen or Mr. Pickett, together with either Wayne Freeland or James Hayes? A. I might have. I don't recall.

• • • • •

1796 Q. Did you also do the furniture, Mrs. Dobbins, for the Glen Haven Country Club,— A. Yes, I did.  
Q. —in Houston?

When would you have done that?—trying to place it in time as to when you did Mr. Allen's apartment A. You know, truthfully, I really cannot even remember the year, because we were doing a lot of different—I think it was previous to this, and how long I don't know.

• • • • •

1798

**Jinx Dobbins,**

having returned to the stand, was examined and testified further as follows:

• • • • •

1801 Q. What was it that you would have done along that line?

Mr. Loewy. Your Honor, could she answer what she did do, rather than what she would have done?

Mr. Bergan. Well, I phrased it kind of badly. That's what I intended to ask her.

The Witness. Well, I know that my memory is inclined to be pretty bad. But we did do a lot of work. I assume, and I am sure up to a point, that this is what I did.

• • • • •

1803 Q. How many times would you say you met with Clark Harmon? A. I'm sorry. I don't have any idea. I really do not remember.

Q. You did meet with him on at least one occasion; you recall that? A. Correct. But I really don't remember how many.

• • • • •

1940

**Roy Luttrell Leinster**

was recalled and testified further as follows:

• • • • •

Q. And were you paid for this accounting work at the Indian Ridge Country Club out of Lakewood Country Club funds? A. I don't remember.

• • • • •

1941

**Frank C. Feise**

was called, and being first duly sworn, testified as follows:

**Direct Examination**

**By Mr. Loewy:**

Q. Would you state your name please? A. Frank C. Feise.

Q. And where do you reside, Mr. Feise? A. Narberth, Pennsylvania.

Q. And what business are you in, Mr. Feise? A. Tennis court builder.

1942-1943 Q. Is your firm located in Narberth, Pennsylvania? A. Correct.

Q. Directing your attention Mr. Feise, to the year 1959, and the year 1960, did your firm construct tennis courts at Lakewood Country Club in Rockville, Maryland? A. Right.

Q. And how many tennis courts did you construct there? A. Four.



Q. And do you recall how much you charged Lakewood Country Club for the construction of these tennis courts?

A. Our contract price was sixteen thousand dollars.

Q. What was covered—what did you give them for that \$16,000? A. Four tennis courts and the fence.

Q. Do you know whether that was negotiated or a competitively bid contract? A. I have no knowledge of that—no, sir.

Q. Do you recall with whom you negotiated these contracts or with whom you dealt? A. No sir—I do not.

Mr. Loewy: No further questions.

The Court: You don't recall the gentleman you dealt with?

The Witness: No, sir.

• • • • •

1946 Q. Now let me show you Defendant's Exhibit

No. 37 for identification? Do you recognize that?

A. I don't—no, sir.

Q. Have you ever seen that before? A. I wouldn't know. May have, I may not have.

I don't have any recollection.

• • • • •

1967 Q. Would you look at page 18 of Government's no. 39 the cash disbursements journal— A. Yes—this has an indication based upon the payments "Freeland and Hays—life 818 and regular 357".

Q. And is that as of November 30, 1959? A. That is correct—357 as of 11.30.59.

Q. Mr. Leinster, at my request did you make a further computation to determine how many were involved? A. Yes sir—I added the additional sales during the month of December 1959.

Q. And when you say you added the sales—is that counting the names in the book? A. Counting the names—that was counting the sales in this book.

Q. And what did you find to be the total on January 1, 1960—if you found such a total? A. Life 842—regular 376.

• • • • •

1996 Q. Would you then, with the qualification that you have given us, tell us what your determination is from the books and records as of around October 1st?

A. On or about October 1st the total membership was 1,843, which consisted of 1,124 life and 719 regular members.

Q. Mr. Leinster, are you able to say from the books and records—and here I believe we are back in a period when you were keeping them yourself—when life memberships reached 150? A. Around the 5th of August, 1959.

Q. 1959? A. Yes.

Q. When did they reach 200? A. The 11th of August, '59.

Q. And 250? A. The 17th of August, 1959.

• • • • •

2026 Q. Do you have any present recollection as to when, in point of time, Mrs. Linn was employed?

And I'm not really asking for a date; but perhaps  
2027 you can fix it in terms of the time that you became employed on the country club project. A. I cannot say. I don't remember when she first came on the scene. I was under the impression that it was in late '59. But it may have been later. I don't remember.

• • • • •

2042 Q. You indicated yesterday, Mr. Leinster, that there came a time when you made a trip to Boston with respect to the Indian Ridge Club, and another time when you made a trip to Pittsburg with respect to the Eden Roc Club, and a third time when you made a trip to Providence, Rhode Island, for a club known as Quidnessett.

What I want to inquire of you, sir, is your recollection with respect to who paid for those trips. Let's turn first

to Eden Roc. Do you recall receiving payment for that trip on a check drawn on an Eden Roc account? A. I don't recall. But it might well have been from that source.

• • • • •

2147

**Mr. Donald Brimmer**

was called as a witness by and on behalf of the Government and, having been first duly sworn, was examined and testified as follows:

• • • • •

2156 Q. If you know, was she paid out of the funds of the Lakewood Country Club? A. I couldn't answer that right now.

• • • • •

2217 Q. Mr. Brimmer, in the course of your examination of the books of the Lakewood Country Club corporation, and the Country Club Developers corporation, did you find entries relating to the construction of the golf course, swimming pools, tennis courts and the clubhouse bathhouse at the Lakewood Country Club? A. I did.

A. And did you find that in each case there was an entry reflecting the charge by Country Club Developers to the Lakewood Country Club for the construction of those facilities? A. I did.

Q. And in the books of the Country Club Developers did you find that there was another figure which reflected the original contract price between the Country Club Developers company and the various subcontractors? A. I did.

Q. Now do you have in front of you a copy of Government's Exhibit 181? A. Yes.

Q. —which has been distributed to the members of the jury. And does that Exhibit 181 reflect the figures which I have discussed with you in the previous two or three questions? A. They do.

Q. Now in connection with the golf course, Mr. Brimmer, would you state for the Court and jury how much the contract price between Lakewood Country Club and Country Club Developers was? A. \$245,000.

Q. And what was the contract price between Country Club Developers and the Carroll company? A. \$165,000.

Q. And did you go through the subtraction process and arrive at this \$80,000 figure on the side? A. I did..

Q. Now turning to the swimming pools, what was the contract price originally between the Lakewood Country Club and the Country Club Developers for the construction of the swimming pools at Lakewood Country Club? A. \$75,570.

Q. And between Crystal Pools and Country Club Developers? A. \$59,650.

Q. And is the figure at the right the subtracted difference between the two? A. That's correct.

Q. And now the tennis courts, Mr. Brimmer. What was the original contract price between the Lakewood Country Club and Country Club Developers, Incorporated? A. \$43,500.

Q. And between Country Club Developers and the Feise company, who constructed the tennis courts? A. \$16,000.

Q. And again does the figure \$27,500 reflect the difference between the two figures? A. It does.

Q. Now the clubhouse bathhouse. What was the contract price originally between the Lakewood Country Club and the Country Club Developers corporation? A. \$625,000.

Q. And between Country Club Developers and the Eugene N. Hooper company, who constructed the clubhouse-bathhouse? A. \$542,969.

Q. And again the difference is reflected in the middle column? A. Correct.

Q. And, Mr. Brimmer, did you also arrive at a total for the difference between the contract prices, totaling 2220 these four contracts? A. I did.

Q. And what was that total? A. \$205,451.

• • • • •

Q. Mr. Brimmer, in the course of your examination of the books of Lakewood Country Club and Country Club Developers and PAP, Incorporated, did you make an examination to determine the expenditure of certain funds in those books? A. I did.

Q. And do you have before you now a copy of Government's Exhibit 183? A. I do.

Q. Does that reflect the results of your examination to determine the disposition of some of those funds? A. It does.

Q. Mr. Brimmer, would you first turn to Schedule A-1. And may I ask you, sir, did you find that monies were paid over to Troy Post, Bill Allen and Leroy Pickett? A. I did.

2221 Q. And were monies paid over to Post, Allen and Pickett from three corporations—the Lakewood Country Club, Country Club Developers and PAP, Inc.? A. It was.

Q. And on the books and records of the Lakewood Country Club were these payments carried under various headings, such as "Management & Advisory Fees," "Sales Commissions," "Salaries" and "Loans"? A. They were.

Q. And are those payments reflected on Schedule A-1? A. That is correct.

Q. Now, Mr. Brimmer, turning to the second column on Schedule A-1, "Troy V. Post, Jr.", would you explain what those figures below that signify? A. From Lakewood Country Club, management and advisory fees, \$87,536.46; sales commissions, \$6,010 even.

From Country Club Developers, in management and advisory fees, \$11,930.54; in salaries, \$2,710; in loans, \$2,500.

In the books of PAP, Incorporated, salaries, \$2,710; loans, \$2,200.

For a total, all three corporations, of \$115,597.

Q. The figure \$115,597, is that money paid by these  
2222 three corporations to Troy V. Post, Jr.? A. That is correct.

Q. Now turning to the column "Bill M. Allen," do the figures running down that column signify the same thing for Mr. Allen that the figures in the column to the left signified for Mr. Post? A. That is correct.

Q. And, just for clarity, what was the total received from Lakewood Country Club, Country Club Developers, Inc. and PAP, Inc. in cash payments bearing these designations in the books? A. \$40,206.57.

Q. Now turning to the column headed, "L. W. Pickett." A. \$47,735.14.

Q. That is cash money paid to Mr. Pickett? A. Yes.

Q. And where does the grand total appear, if one appears on there? A. If I understand your question right, the grand total of \$203,538 odd dollars appears on Schedule A as "Cash to Post, Allen and Pickett."

Q. Is that the figure in the lower righthand corner as you face the chart? A. Right.

Q. And that figure, does that figure represent the 2223 total cash monies paid to Post, Allen and Pickett by the Lakewood Country Club, Country Club Developers and PAP, Inc.? A. That is right.

Q. Now would you turn, please, Mr. Brimmer, to Schedule A-2.

In the course of your examination of the books of the Lakewood Country Club, Country Club Developers, Inc. and PAP, Inc., did you find expenditures to certain firms and companies, or disbursements classified as loans and advances,— A. We did.

Q. —to certain companies? A. I did.

Q. And are they listed in the lefthand column there?

A. The companies are in the lefthand column.

The Court. That is, the recipients of the money are in the lefthand column?

The Witness. That is correct, sir.

By Mr. Loewy:

Q. And, Mr. Brimmer, would you state for the Court and jury, from the chart, from what corporations, and how

much, was received by the Extenso Hanger Company?

A. The Extenso Hanger Company received \$11,000 from Country Club Developers, Incorporated.

2224 Q. And the Eden Roc Country Club? A. It received \$4,000 from PAP, Incorporated.

Q. And Gold Contractors, Incorporated? A. They received \$15,00 from Lakewood and \$48,685 from Country Club Developers.

Q. And the total received by Golf Contractors was \$63,685? Is that correct? A. Correct.

Q. And Golf Contractors, Incorporated? A. They received money—Pioneer Point Associates, Quidnesset Country Club and Shore Club Estates? A. That is correct.

Q. Now directing your attention to the bottom line, what was the total paid all six of these companies by the Lakewood Country Club, Inc.? A. \$28,729.90.

Q. And by Country Club Developers? A. \$96,421.19.

Q. And by PAP, Inc.? A. \$4,000.

Q. And would you again state what the grand total is that was paid all these six recipient companies by the three paying corporations—Lakewood Country Club, Country Club Developers and PAP, Inc. A. \$129,151.09.

2225 Q. Now would you please turn to A-3.

Did you find, Mr. Brimmer, in your examination of these books, that money was paid back or came into the Lakewood Country Club, Country Club Developers or PAP, Inc. from certain corporations? A. I did.

Q. And are they listed in the lefthand column? A. The clubs or other itmes, other accounts, on the left, are the ones that paid money back, correct.

Q. And would you state how much Country Club Developers, Inc. of Delaware paid back to each of the three corporations? A. They paid to Lakewood \$4,900; to Country Club Developers, Incorporated \$5,700; and to PAP, Incorporated \$4,500—or a total of \$15,100.

Q. And skipping then to the Eden Roc Country Club, how much did the Eden Roc Country Club pay back and

to which firm did it pay this money? A. It paid back \$11,105 to Country Club Developers, Incorporated.

Q. And what was the grand total paid back by these—  
A. \$35,705.

Q. And would you now please skip to Schedule A-4, sir.  
Does Schedule A-4, Mr. Brimmer, actually reflect certain sample expenditures made by the Lakewood 2226 Country Club, Country Club Developers and PAP, Inc. as reflected on the books of those respective firms? A. It does.

Q. How much did Lakewood Country Club pay for advertising and sales promotion? A. \$73,447.77.

Q. And did Country Club Developers pay \$9,773,99? A. Correct.

Q. How much was received from the Lakewood Country Club by Freeland and Hayes? A. \$98,887.

The Court. That was received or paid?

The Witness. Freeland and Hayes received it.

The Court. Freeland and Hayes received from the Club?

The Witness. Right.

• • • • •  
2234 Q. And finally, Mr. Brimmer, what was the total amount, approximately, collected from the people who joined the Lakewood Country Club, in initiation fees? A. Approximately \$1,250,000 for initiation fees alone.

Q. And would the \$250,000 figure you stated earlier for excise taxes be added to that? A. That is correct.

The Court. How much?

The Witness. \$1,250,000 initiation fees, plus approximately \$250,000 excise tax.

By Mr. Loewy:

Q. And the total collected from the membership for those two things would be approximately a million and a half dollars, then; is that correct? A. That is correct.

• • • • •



2252 Q. I am sorry. Now, the other two ladies, can you recall their names? A. I can recall the name or the first name of one—I am trying to think of the second name—Polly—

Q. Hawkins? A. Polly Hawkins. That is correct. And the other lady, I can't recall her name.

Q. Did either or both of these ladies appear to have any particular areas to which they confined their attention, or were they doing general bookkeeping work?

A. No. The lady's name who I can't recall, she worked on a National Cash Register Posting Machine post-  
2253 ing the members' accounts.

Q. And Miss Hawkins? A. I believe Miss Hawkins also worked some on accounts receivable and deposits.

Q. Is the name of the lady who worked on the National Cash Register Bookkeeping Machine Lois Scmanski? My pronunciation may not be the best. A. I believe that is correct. I remember the first name very well.

\* \* \* \* \*

2300

**Mr. Eugene Hooper**

was called as a witness by and on behalf of the Government and, having been previously duly sworn, was examined and testified further as follows:

\* \* \* \* \*

2335 Q. I was going to—when did you pull off the job?

A. I don't remember. I know that we pulled off and then went back to work.

\* \* \* \* \*

Q. Right away. And when, as you best recall, did you pull off the first time? A. I don't remember.

\* \* \* \* \*

2336 Q. And then how long did you go back for?

A. I don't remember. In fact, I don't remember how many days we were off. I'm guessing at that.

\* \* \* \* \*

2337 Q. Do you recall how much was paid you in order to induce you to go back? A. No, I don't remember.

Q. Do you recall how you received the payment? A. No, I don't.

Q. I mean, if you recall, was a check handed to you, or did you receive something through the mail? A. I think it was a check handed to me.

Q. By whom? A. Mr. Allen.

Q. And, as best you can recall, when would you say you pulled off the first time? A. I couldn't even guess.

• • • • •

2338 The Court. Now take a look at the last requisition there.

Were there any subsequent requisitions filed? In other words, was there any work done by you after that last requisition there?

The witness. I don't remember.

• • • • •

2426

**Mr. Troy V. Post, Jr.**

a defendant herein, was called as a witness in his own behalf and, having been first duly sworn, was examined and testified as follows:

**Direct Examination**

**By Mr. Bergan:**

Q. Will you state your full name, please, sir? A. Troy Victor Post, Jr.

Q. What is your current address, Mr. Post?  
2427 A. 4326 Clairmont Avenue, Birmingham, Alabama.

Q. What do you do for a living? A. I am an insurance consultant with the Stonewall Insurance Company.

Q. Where is the Stonewall Insurance Company located?  
A. It's located in Birmingham.

Q. Mr. Post, when were you born? A. October 24th, 1930.

Q. Are you married, sir? A. Yes, sir.

Q. Children? A. Yes, sir, I have three, two boys and a girl.

Q. How long have you resided at your current address? A. Since 1962, about March.

Q. Where did you reside prior thereto? A. Prior to that time I resided in Arlington, Virginia.

Q. Was that during the period of time you were associated with the Lakewood Country Club? A. Yes, it was.

Q. And prior to the time that you resided in Arlington, Virginia, where did you live? A. I lived in Dallas, Texas, up till the time I moved here in 1956.

2428 Q. Mr. Post, where were you born? A. In Dallas, Texas.

Q. And where did you attend school, sir? A. I graduated from high school in Houston, Texas, in 1949 and then went to Southern Methodist University in Dallas from 1949 through 1955.

Q. Do you have any graduate training? A. Yes. I took a combination six-year business and law course and received a degree in business administration and a degree in law in 1955.

Q. Are you admitted to the practice of law in any court? A. Yes, sir. I was admitted in about April, 1955, to the Supreme Court, State of Texas, and then later on in 1956 to the Bar of the District of Columbia.

The Court: What was the first date of admission, Mr. Post?

The Witness: April, 1955.

The Court: That is the Texas Supreme Court?

The Witness: Yes, sir. In Texas there are no lower court levels at which you may be admitted.

By Mr. Bergan:

Q. Have you have any military service? A. In 1954 I Joined the Army Reserve under an eight-year enlist-

2429 ment with the contemplation of going on active after graduation; and I received my honorable discharge in November of 1962 from the reserve.

Q. Will you state, again, when it was that you graduated from law school? A. 1955 in June.

Q. Following June of 1955, what did you do for a living? A. I had previously worked for an insurance company in Dallas, the Reinsurance Company of America, during the summer months and part-time during school, and I remained with them after graduation because I, at that time, contemplated going into active duty in the service.

Q. I neglected to ask you what you do now with the Stonewall Insurance Company in Birmingham, Alabama? A. I am in the I.B.M. Data Processing Department.

Q. Following your employment with the Reinsurance Company of America in 1955, what next occupied your attention? A. In about March of 1956 the people who owned that company indicated they wanted to establish a mutual investment fund in Washington, D.C., and they inquired if I would like to come to Washington and work for that fund.

Q. Did you do so? A. Yes, I did.

Q. And, if you could put an approximate date on 2430 this, would you do so? Give the month and year.

A. About April of 1956 I arrived in Washington, and I would say within a week or so of my arrival I actually began to work.

Q. What were your duties during this period of time? A. The first few months I was to assist the law firm that was preparing the Securities and Exchange material for the mutual fund. The law firm was Fullbright, Crooker, Freeman, Bates and White here, but it is a Houston, Texas, law firm that the company was using.

Q. Was it at or about this time that you first met Mr. Allen? A. Yes. I had known of Mr. Allen previously but I had never met him in person until about May, 1956.

Q. Did you continue your employment with this mutual investment company here in the District of Columbia?

A. Yes. I was with them either as attorney or an officer of the company until approximately March, 1958.

Q. What was the name of this investment company, as you recall? A. The American Investment and Income Fund, Incorporated.

Q. During this period of time had you been admitted to the practice of law in the District of Columbia?

A. Yes. I received the admission in approximately 2431 November, 1956.

Q. Did you, in fact, practice law in the District of Columbia? A. I did practice law and maintained an office separate and apart from the company that I was working for at various times until about 1961 in July; and then I moved to Arlington for about six months; and then I had an office from that time until February, '62.

Q. Now, directing your attention to the period of time April, May, June, July, 1958, did there come a time when you became associated with an enterprise known as the Sam Snead School of Golf? A. Yes, in about June, 1958.

Q. Will you describe your association with that school and the manner in which it came about, sir? A. Through Mr. Allen I met a Mr. Charles Palmer and Mr. Carl Reid, who were the principal officers of the Sam Snead School of Golf, which was a Texas Corporation with headquarters in Dallas. And they came to Washington and after some negotiations by Mr. Allen and myself and another individual, we took a sales agreement from that corporation, and our franchise, as it was, was for the territory in the United States East of the Mississippi.

Q. What was the Sam Snead School of Golf, Mr. 2432 Post? A. It was a system of golf instructions which contemplated the using of indoor schools to teach golf. And Mr. Palmer and Mr. Reid, through their association with Mr. Sam Snead, had worked on a program of instruction for the teaching of golf and using what they term the Sam Snead method of teaching golf indoors.

Q. Were you associated in this endeavor with Mr. Allen? A. Yes.

Q. Up to this time had you met Mr. Pickett? A. I believe I had met Mr. Pickett in late 1957, so I would have known him at this time.

Q. Your function with the Sam Snead School of Golf, as I understand it was under a sales agreement to franchise schools throughout the East? A. That is correct.

Q. Did you ultimately do one in the District of Columbia? A. Yes. We made an agreement with some local people here and they established a school in Silver Spring in the Hyde Building.

Q. Did there come a time during your association with the enterprise known as the Sam Snead School of Golf that you met Mr. Snead? A. I met him about three 2433 months after we had originally taken this agreement. He came to the dedication or the opening of a school which was starting in Philadelphia, or rather a small suburb of Philadelphia and, as I recall, that was the first time I had met him other than seeing him at a golf course.

Q. Now, you mentioned two gentlemen, one of whom was named Mr. Charles Palmer and the other a Mr. Reid. Would you tell us who Mr. Charles Palmer was? A. Mr. Palmer was introduced to me but I had no background knowledge of him, but in talking with him, etc., I learned that he had previously worked in the country club development field and that he had about a year previous to this working together with Mr. Reid formed this system for teaching golf.

Q. Did there come a time at or about this period, the spring and fall of 1958, that you met a Mr. James Hayes or a Mr. Wayne Freeland? A. Yes, I would say that I met them in the fall of 1958.

Q. After making your contract with the Sam Snead School of Golf what did you do then? A. We proceeded to attempt to sell franchises in schools in various areas of the East Coast, principally in the larger cities, Washington, New York, Philadelphia, the State of Florida; and

we continued with that until, I would say, around April, 1959.

2434 Q. During this period of your association with the Sam Snead School of Golf, was it that you began to consider the formation of a country club in the Washington, D. C. metropolitan area? A. That is correct.

Q. Can you fix an approximate time at which you first began to consider this type of operation? A. I would say actually from the time I began talking with Mr. Palmer, because he had worked on, I believe, two country clubs in Dallas along a non-member owned line, and it seemed like it had a lot of interest to me and, of course, at that point I was interested in golf as a business venture.

Q. Was this in 1958? A. In 1958; that is correct; around the middle of June.

Q. During your discussions with Mr. Palmer of the country club field, did he mention Mr. Freeland or Mr. Hayes to you? A. Yes. He mentioned them as being people who were presently in the club development field. That is, Mr. Palmer was no longer interested; he was devoting his full time to the golf school.

Q. When did you begin discussing the formation of a country club in the Washington area with Mr. Allen?  
2435 A. I would say possibly June or July of that same year, basically, as soon as I had learned that there were such types of operations.

Q. You said that same year. Do you mean 1958? A. 1958.

Q. I will ask you the same question now with respect to Mr. Pickett. When did you first begin to discuss this type of operation with Mr. Pickett? A. The first specific recollection that I can recall would be about October or in the fall of 1958 when it had progressed to the point that we were interested in sites of property or land that was available. And with Mr. Pickett's background in the real estate field and with his knowledge of the local area and local people, I would say that would be the first time I had discussed it with him.

Q. Did there come a time in the fall of 1958 when you began to seek out a location at which you would install or operate a country club? A. Yes, I would say around October, 1958.

• • • • •  
2437 Q. I am going to show you, Mr. Post, what has been marked as defendants' exhibit 219 for identification and ask you if you recognize that? A. Yes, I recognize it.

Q. What do you recognize that to be? A. This is a copy of a letter which I signed dated November 5th, 1958, addressed to Mr. Byrd, James P. Byrd.

Mr. Bergan: I offer it in evidence, Your Honor.

The Court: Have you any objection, Mr. Loewy?

Mr. Loewy: May I read it to the jury?

The Court: Very well, it may be read.

2438 (Defendants' Exhibit 219 was received in evidence.)

[Reading by Mr. Bergan]

"November 5, 1958

"Mr. James P. Byrd  
1627 K Street, N. W.  
Washington, D. C.

Dear Mr. Byrd:

Since the discussions held with you, Mr. Allen and Mr. Pickett, I have been in contact with our group in Dallas. As you know, the Dallas people are the key figures from our standpoint, as they have the experience necessary for a successful completion for the project.

From the experience gained by their four previous promotions of Country Clubs, Mr. Freeland and Mr. Hayes have developed a technique of promotion for clubs that guarantees success. They feel as we do, that Washington would be a choice location for a new club. However, as you know, after the proper research and survey work has



been done and has indicated the feasibility of both the idea and the location, great care must be taken to insure that direct expenditures by the club are held to a minimum so that the financial position of the club remains sound. Included in this minimum are of course, the improvements promised to the members, such as pool facilities, the club house, golf course, etc., and these improvements require an outlay of better than \$100,000.00. They are however, necessary and delay or postponement can ruin the club's chances for success.

2439 [Reading of Defendants' Exhibit 219 by Mr. Bergan]

"For these reasons, an arrangement equitable to both the landowner and the club must be worked out. While it is to the club's best interest to avoid expensive payments, the landowner cannot be expected to carry more than his share. An arrangement such as follows is proposed by the Dallas group, and I think you will agree it offers much to the landowner.

The developers, probably incorporated, would be granted a six month option providing that the developers could during that time lease the acreage for ten years at a rental of \$36,000.00 annually. The lease in turn would give the leasee the option to purchase within this time period, the acreage concerned at a price per acre as agreed upon. The price per acre would increase as the time periods progressed.

In return for the landowner's concession on time, the price per acre initially would have a premium of \$200.00 per acre above the per acre price of \$1,500.00 which was the market value indicated. Further, a written guarantee would be given by the developers that during the six month preliminary term a minimum of \$50,000.00 would be spent for promotion and development of the club idea.

I would appreciate your comments on the above or if you would like clarification or amplification please advise.

"Sincerely,

"Troy V. Post, Jr."

"TVP/rg

• • • • •  
2440 Q. From whom had you learned at this point as you wrote to Mr. Byrd that Mr. Freeland and Mr. Hayes had gained experience from four previous promotions of country clubs? A. I had known myself of two of their clubs in Texas and they had told me of the other two.

Q. By they you mean Freeland and Hayes? A. Mr. Freeland and Mr. Hayes; yes.

The Deputy Clerk: Defendants' Exhibit Number 220 is marked for identification.

(Defendants' Exhibit No. 220 [Ltr Nov. 5, 1958 to Freeland & Hayes] was marked for identification.)

2441 Mr. Bergan: Would you mark this also.

The Deputy Clerk: Defendants' Exhibit No. 221 is marked for identification.

(Defendants' Exhibit No. 221 was marked for identification.)

By Mr. Bergan:

Q. Mr. Post, did you take up the proposal that you made to Mr. Byrd in this exhibit which I just read to the jury with Mr. Freeland and Mr. Hayes? A. Yes. I had submitted basically what they had told me to offer to Mr. Byrd and then I discussed with them his statements made to me prior to the offer and evolved the letter from that.

Q. Now, I show you, Mr. Post, what has been marked as defendants' exhibit 220 for identification and ask you if you recognize that? A. Yes, I recognize this.

Q. What do you recognize that to be, sir? A. This is a copy of a letter which I wrote to Mr. Wayne Freeland and Mr. James Hayes, dated November 5th, 1958.

Mr. Bergan: I offer 220 in evidence, Your Honor.

Mr. Loewy: No objection, Your Honor.

The Court: It may be received in evidence.

(Defendants' Exhibit No. 220 was received in evidence.)

2442 Mr. Bergan: May I read this, Your Honor.

The Court: You may read it.

[Reading of Defendants' Exhibit No. 220 by Mr. Bergan]

"November 5, 1958

"Mr. C. Wayne Freeland  
Mr. Jim Hayes  
C/O Casa View Country Club  
P.O. Box 28156  
Dallas, Texas

"Dear Wayne and Jim,

"I am enclosing a copy of a proposal I submitted to the broker here, and I have my fingers crossed that I got the information right. It should be obvious that this is all new to me, and I would appreciate your comments on this letter so that it can be improved.

"Frankly, I feel that the property owner here faces a note maturity in three years that is going to prevent him from making us any kind of a suitable arrangement. As I indicated to you previously, approximately one third of the property's value must be paid on notes in three years or perhaps refinanced.

"It is also possible that this property is a little bit too big for us, but as you said over the phone, we might as well knock him to the floor and see what happens.

"I imagine I will receive a quick reply and will let you

know how it comes out. In the meantime, if you would make some changes in the letter to correct anything I have misstated, it will certainly be appreciated.

"TVP/rg

"Sincerely,

"Troy V. Post, Jr."

• • • • •

By Mr. Bergan:

2468 Q. During this period of time, or prior thereto,  
had you and Mr. Allen and Mr. Pickett discussed  
the format of the country club which you were going  
2469 to establish? A. Yes. We had not decided on a name  
or anything like that. But we had discussed in general  
what would be required and how it would operate  
and function.

Q. Had you discussed this with Mr. Freeland and Mr. Hayes? A. I might qualify it to this extent. They had informed us how theirs was set up. We at this point had no original ideas on the program.

Q. And how was it that you proposed to establish this club—just in general terms. A. In general, the land or the site for the club would be taken on an option, as long an option as possible, to allow, first of all, a test run to be made of the membership interest; and to maybe get zoning permission, if you had to have that; and to, in general, sort of test or survey the area to see if a club would work.

And then you would have to have, of course, a non-profit corporation to be the actual club; and then the nominal office supplies and materials, and so forth. Things like that would depend upon what name was picked out. So there was no arrangement at that point for that type of thing—although I had received copies of certain of their literature that had been used in membership applications, and things like that.

• • • • •

2470 Q. Mr. Post, I want to show you what has previously been marked as Defendants' Exhibit No. 1 for identification, and ask you if you can identify that, sir, or if you recognize that. A. Yes, I recognize this.

Q. What do you recognize that to be? A. This is a survey plat of a large area. But it comprises the original Simmons property, and then the smaller portion of his Glen Hills Club Estates property which we leased.

And then it shows the Viers tract of land, and also shows the Carter piece of land.

2471 Mr. Bergan. I offer this in evidence, Your Honor.  
Mr. Loewy. No objection, Your Honor.

The Court. Defendants' 1 for identification is received in evidence.

• • • • •  
2476 Q. I want to show you, Mr. Post, what has been marked as Defendants' Exhibit 223 for identification, and ask you if you recognize that. A. Yes. This is a photostat of the option agreement between Allen Associates and Glen Hills Club Estates and Mr. Simmons.

The Court. It is a lease option agreement, isn't it?

2477 The Witness. No, sir; it was an option to lease.  
Mr. Bergan. I offer this, Your Honor.

Mr. Loewy. May I see it once more, please?

It is a lease between Glen Hills Estates and Bill M. Allen, Your Honor. I thought Mr. Post said Bill M. Allen and Associates. I don't have any objection to it.

The Court. Very well. Defendants' 223 is received in evidence.

(The agreement heretofore marked for identification as Defendants' Exhibit No. 223 was received in evidence.)

Mr. Bergan. I am not going to read the whole thing; but I would like to read about two paragraphs of it, Your Honor.

The Court. Very well.

Mr. Bergan. It is captioned "Agreement," and the first paragraph:

"This Agreement, dated this 16th day of"—I'm sorry; I can't read the month.

The Court. I would assume it is April, from the last page.

Mr. Bergan. Yes, I think it is April, 1959—"by and between Glen Hills Clubs Estates, Inc., a Maryland corporation, hereinafter called party of the first part; Bill M. Allen, hereinafter called the party of the second part; and Marvin M. Simmons, hereinafter called the  
2478 party of the third part."

"Whereas, the party of the first part is a corporation presently seized and possessed of a large tract of land near Rockville, Montgomery County, Maryland, and the party of the second part is presently interested in the promotion of golf and country club on a portion of this particular site; and

"Whereas, the party of the third part is the principal and majority stockholder of Glen Hills Club Estates, Inc., party of the first part.

"Now therefore, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:"

And there follow the terms of the agreement.

I should like now to read the paragraph at the top of page 2:

"All utilities used on said land by the party of the second part are to be paid by the second party. The party of the second part will promptly after the signing of the lease, begin construction and diligently pursue the construction of a golf club house and related facilities with golf course, comparable in performance and with the facilities presently located at the Casa  
2479 View Country Club in Dallas, Texas. The party of the first part agrees to offer the land under this

lease as security for the obtaining of a construction loan for such purpose with a recognized financial institution, with interest rate not to exceed six per cent; provided, however, that from said proceeds the party of the first part will receive the sum of One Hundred Thousand Dollars from which the unpaid balance and interest due of any existing encumbrances against the land shall be paid. The party of the first part agrees to pay interest on the said one hundred thousand dollars for the life of the said loan or until paid, whichever occurs first. The party of the first part further agrees to make all payments as may be due and payable under the said loan, when they become due and payable. Should the loan so obtained be greater in amount than \$100,000.00, then the amount borrowed over the \$100,000 shall be divided equally between the party of the first part and the party of the second part. In that event, each party shall be responsible for the repayment, interest due and all other payments provided for, in the exact proportion represented by the amount of the loan each has received."

The Court. Is there any part you want to read of 2480 this now, Mr. Loewy?

Mr. Loewy. No, Your Honor. Thank you.

Mr. Bergan. And the signatures, I will read the signatures:

"First party, Glen Hills Club Estates, Inc., by Marvin Simmons, President.

"Second party, Bill M. Allen.

"Third party, Marvin W. Simmons."

By Mr. Bergan:

Q. Mr. Post, the part I just read from that option agreement, was that portion incorporated in this option agreement at the insistence of you and your associates? A. Yes.

And of course Mr. Simmons desired the same feature himself.

Q. Why were you interested in the incorporation in the agreement of that particular provision? A. This would allow us to finance a portion of the facility, if we had to, and would also give us a right to subordinate his land to that loan.

Q. Did Marvin Simmons, during your negotiations with him, advise you that such a loan could be obtained against the land. A. Yes. He said he felt that he could arrange one if we could find it.

• • • • •  
2482 Q. If the test indicated to you that there was insufficient interest in the area, what would you have done in such an event? A. About the only thing we could do would be just to refund the whatever monies might have been collected from the members, and advise that you would not be able to proceed with the program; and pay off whatever expenses you had incurred, and advise Mr. Simmons you wouldn't exercise the option.

Q. Did you have an estimate in your own mind and that of your associates as to the kind of show of interest that you needed before you would go forward with the project? A. My understanding was that the first ad would have to generate at least two or three hundred inquiries, to show there was enough interest. And that during the first week we would have to at least have 50 to a hundred applications; and within a couple of weeks we should have at least 150 to 200 applications.

• • • • •  
2483 Q. Had you at this point of time been to any of the clubs which Mr. Freeland or Mr. Hayes were associated with? A. I had not. On April 16th I had not actually been inside of one. I had seen the Casa View Club in Dallas, and I had seen the Riviera Club several years before in Dallas—although I didn't know it was one of their clubs at the time I saw it.



But about a week or so later I went to Texas for a family wedding, and I went down to Houston to actually see the inside of one of their clubs, the Glen Haven Club in Houston.

Q. While you were in Houston did you meet with Mr. Freeland and Mr. Hayes? A. Yes, and with their pool people that they had there at the club site. I believe I met their accountants, and we talked generally about it. And I picked up some more materials, and asked for their corporate materials, how the corporation should be set up, and the by-laws, and things like that.

2484 Q. Did there come a time when you and Mr. Allen and Mr. Pickett all journeyed to Houston to meet with Mr. Freeland and Mr. Hayes? A. That was about a month later, during June, 1959. Well, it was at least a month later—probably six weeks later.

Q. And at that time did you meet—and I am talking about the time in June—did you meet with Mr. Freeland and Mr. Hayes? A. Yes. We met with them out at the Houston club that they had, the Glen Haven club, and went through their operation. And I went through their book-keeping operation, since that was my principal interest; and talked again about securing the legal forms, the by-laws and membership applications, and the corporate setup. And I was given the name of their attorney to contact, who was in Dallas.

\* \* \* \* \*

2485 Q. Did you also meet with a smaller group of Montgomery County citizens, prior to the zoning hearing, to discuss the club? A. Just prior to that picnic, which was on a Sunday, directly before the zoning hearing, I was invited to the home of, I believe, a Mr. Marsden. And certain other people were there who represented the  
2486 different civic associations around the Glen Hills property.

There were about four of these associations, none of which had over 60 members. And they each sent a delegate

—unofficially, I presume—to meet with me and go over the idea we had, because we wanted each of these associations to take a definite stand at the zoning hearing.

Q. Can you recall the names of any of the individuals who were present at this smaller meeting at Mr. Marsden's home? A. I am sure Mr. Timken was there, and of course, Mr. Marsden, and I believe J. Strong. But I have no specific recollection of any of the others being there.

Q. Was this meeting, in point of time, prior to the picnic or after the picnic? A. Yes, I believe it was about, no more than a week before the picnic.

Q. And did you explain to—and I am talking about the meeting at Mr. Marsden's home, now—did you explain to the persons at that time the general setup of the club which you proposed? A. Yes, I did.

Q. Can you recall specifically any of the matters that were discussed? A. The principal thing that had 2487 impressed me about the operation was the idea of a professionally-run club, as opposed to a member-run club; and my emphasis was on that particular point; that this was to be a club run by a group of persons who would employ specialists in pool operation and golf course maintenance, rather than have a members' committee attempting to run these various businesses within a business a country club is.

And, secondly, that by doing this the membership itself would have guarantees against constant assessments to cover operating losses, and continually hiring and firing personnel; and also the cycle that the dues must constantly keep increasing.

Q. Did you make the same general kind of explanation to persons at the civic picnic which you described? A. The picnic was more of a generality-type affair. We had some display material. And the questions were strictly in the nature of "How long do you think it will be before you can get started?"

One thing that was said, we had a picture of the Glen Haven clubhouse, and there was mention as to whether or not we were going to have palm trees in this part of the country.

But it was not any specific type question and answer period as such. And it was a fairly long Sunday,  
2488 and everybody just milled around the displays we had and asked questions of everybody.

• • • • •

2489 Q. Do you recall whether the leaders or the chairmen or the presidents of any of these small civic associations were present at that particular zoning  
2490 hearing? A. Yes. Each of the associations that had been present at the picnic had at least one representative there, who in most cases either introduced for the record a petition or a letter signed on behalf of or by the individuals in favor of the granting of the exception.

Q. Can you recall specifically the names of any such persons who were present?

A. Mr. Bruno was there; Mr. Murdock; Mr. Strong; Mr. Timken; Mrs. Whitelaw—although I think Mrs. Whitelaw did not represent the association, to my knowledge. She was one of the few property owners who actually had property adjoining the Lakewood Club—other than, of course, Mr. Simmons. And she had received, therefore, official notice of the hearing. I believe she was there just individually for herself. I had talked to her previously, both at the picnic and before. And she was in support of the exception being granted.

Q. Mr. Post, do you recall what was said by you at the zoning hearing in your presentation in support of the granting of the zoning exception? A. In the beginning, of course, I identified myself and indicated that I was connected with the group that contemplated putting in a club; and that the exhibits which had already been intro-

duced by Mr. Simmons represented what type of facility it was intended be put in at Lakewood, but were pictures of another country club.

And I went into the corporate setup; that we would have a corporation which would lease the land from Mr. Simmons, and that we would in turn sublease it to a non-profit corporation, which I felt would be in compliance with their appropriate law for a zoning exception, which required a club or nonprofit corporation to be the actual user of the property.

Q. Now at this point had you in fact formed the corporations which you contemplated? A. No, I had not.

Q. Did you tell the members of the zoning board at that time what the management of the club would be? A. I indicated that my group would have a management contract from the country club, and that that management contract would enable us to take care of the day to day running of the club itself, and would also provide for the promotion of the club, the development of it, the construction and the running of the club when it became an existing thing.

Q. Did you advise the zoning board and the other persons present that the management corporation or the developers would have the last say in the operation of the club? A. The statement that I made was that the management corporation would make the board of directors subservient to the management company. I did not mean to imply that they would have no authority at all; but that they would have the power to appoint committees and things like that. But I believe I made it clear that they would not have much say in the operational end of the club.

Q. Now did there come a time, Mr. Post, following this zoning hearing, when the petition for special exception was granted? A. Yes. We were not entitled to actually receive a copy of it, since the petitioner was Glen Hills Club Estates. But Mr. Simmons called me on the telephone and

advised me that the board had called him and said the letter would be issued granting the exception.

Q. I show you, Mr. Post, what has previously been marked as Defendants' Exhibit 3 for identification, and ask you if you recognize it. A. Yes, I recognize it.

Q. And what do you recognize it to be? A. This is a photostat of the opinion of the Board of Appeals, issued in connection with the Glen Hills property.

Mr. Bergan. I offer that in evidence, Your Honor.

Mr. Loewy. I would like to look at it a moment, if I may. No objection, Your Honor.

The Court. Very well. Defendant's 3 is received 2493 in evidence.

(The opinion of the County Board of Appeals, heretofore marked for identification as Defendants' Exhibits No. 3, was received in evidence.)

• • • • •  
2498 Q. Would you refer to the last page, and see if they bear a date. A. It indicates they were received for record, July 10, 1959. That would be as to 92, 93 and 94. As to 95, it says it was received and filed August 26, 1959.

The Court. Which one is that, Mr. Post?

The Witness. That is Country Club Developers, Inc.

By Mr. Bergan:

Q. Mr. Post, who formed these corporations? A. At my request, the Corporation Trust Company here in Washington had each of these incorporated.

• • • • •  
2511 Q. I am going to hand you, Mr. Post, what has been marked as Defendants' Exhibit No. 227 for identification, and ask you if you recognize that? A. Yes, I recognize this.

Q. And what do you recognize that to be, sir? A. This is one of several original contracts signed with Freeland-Hayes on June 9, 1959.

Q. And would you recite the parties to that agreement?  
 A. Troy V. Post, Jr., Bill M. Allen, Leroy V. Pickett, and Lakewood Country Club, Inc., Lakewood Management Corporation, all of which identified as the Country Club, and C. Wayne Freeland and James E. Hayes, identified thereafter as Freeland-Hayes.

Mr. Bergan: I offer Defendants' 227 in evidence, 2512 Your Honor.

Mr. Loewy: No objection to 227.

The Court: No. 227 will be received in evidence.

(Contract marked for identification as Defendants' Exhibit No. 227 was received in evidence.)

The Court: That was prior to the time the Club, Inc. or management corporation were incorporated?

Mr. Bergan: That is correct. It recites that in the agreement.

I will ask to read the agreement.

The Court: All right.

Mr. Bergan: It is captioned "Advisory Agreement."

"County of Montgomery

"State of Maryland

"This contract entered into by and between Troy V. Post, Jr., Bill M. Allen, Leroy W. Pickett, and Lakewood Country Club, Inc., and Lakewood Management Corporation. All parties are of the general geographical area of Washington, D. C., hereinafter called the country club and C. Wayne Freeland, Dallas, Texas, and James E. Hayes, Dallas, Texas, hereinafter called Freeland-Hayes.

"All parties agree to be jointly and severally liable under the terms of this contract.

2513 "Witnesseth:

"It is understood and agreed that Freeland-Hayes has for several years been very successful in the business of organizing and operating country clubs, and through such experience has acquired ability and skill very valuable in the organizing and operating of a country club.

"It is further understood and agreed that Freeland-Hayes has been performing services for the country club in the nature of advice, surveys and analysis and other miscellaneous services without a specific agreement as to compensation but with the understanding that compensation would be provided.

"It is agreed that compensation for those past services and certain future services as hereinafter set forth will be paid in the following amounts at the time specified.

"At the time an application for membership is submitted with an initial deposit to the country club ten per cent of the total selling price of such membership shall immediately become due and payable to Freeland-Hayes. Total selling price of a membership is defined as the gross monies contracted to be paid to the country club and by applicant for use privileges of the club and excludes the federal and state excise tax if such applies.

"In addition, Freeland-Hayes is to receive one dollar per month per dues paying member or eight and one half of the dues paid by a member whichever is greater, as the dues are payable excluding any federal and state excise taxes levied thereon. Such compensation becomes due and payable on the tenth of the month following the month of billing. Dues income is defined as dues, assessments or any other regularly or periodically scheduled fees or charges.

"Freeland-Hayes agrees to furnish to the club necessary copies of corporate papers and management or other contracts which they are currently using in other clubs and further agrees to furnish advice and counsel on all phases of the country club development.

On Friday each week the books are to be totaled and the amount of compensation due to Freeland-Hayes determined and full payment tendered by the following Monday on new membership sales. In the event any claims arising under this contract are placed in the hands of an attorney for collection collected through the Probate Court or Bankruptcy Court, the country clubs agrees to pay ten



per cent of the principal and interest due thereon  
2515 in addition hereto as attorney's fees.

"If any membership initiation fee shall be refunded by the country club, for a good and bona fide reason, Freeland-Hayes agrees to refund to the country club any monies received for such a sale.

"The club agrees that Lakewood Country Club, Inc., and Lakewood Management Corporation will adopt and sign this contract as soon as the two corporations are formed and that the terms of this contract will be set forth in detail in the organization minutes of both corporations.

"This contract is to remain in full force and effect so long as a country club exists on the property where this club is to be built and a change of name, ownership, management or other change will not defeat the terms of this contract. This contract may be sold, transferred, conveyed, or otherwise assigned and in the event of the death of any party, the benefits inure to the estate of such party.

"Executed in quadruplicate, each of which shall have the force and effect of an original."

It is signed by Mr. Allen on August 11, 1959. It is signed by Paul V. Rogers on behalf of Lakewood Country Club on August 11, 1959.

It is signed by Mr. Post, Mr. Freeland and Mr.  
2516 Hayes on June 9, 1959.

• • • • •

2523 By Mr. Bergan:

Q. Mr. Post, did you receive any other documents from Mr. Mackay? A. At that same time I received a copy of the operator's or management agreement format which Freeland-Hayes was then using at their clubs.

Q. Did you use that agreement in preparing the operating agreement at Lakewood Club? A. Yes, I had a secretary who, using that, typed a proposed copy for the Lakewood Club, and as I recall, the only changes—



Mr. Loewy: I object, Your Honor, to the only changes.  
The document will speak for itself.

The Court: I will sustain that.

By Mr. Bergan:

Q. I will show you Defendants' Exhibit No. 7 for identification and ask you if you can recognize that. A. Yes, I recognize this.

2524 Q. What do you recognize that to be? A. This was one of the original signed copies of the Lakewood operator's agreement.

The Court: What was that number?

The Witness: No. 7.

Mr. Bergan: Defendants' 7, Your Honor.

The Court: What was it again, please?

The Witness: It is one of the original signed copies of the Lakewood operator's agreement.

Mr. Bergan: I offer Defendants' 7.

Mr. Loewy: May I ask a question about what this is?

The Court: Come to the bench.

(At the bench:)

The Court: What is the question now?

Mr. Bergan: This is the same as Government's Exhibit 39, except that this is the type copy, the one that was signed first.

Mr. Loewy: Go ahead.

Mr. Bergan: My understanding is that after this particular document, Government's 39, was printed, they were re-signed as of the date on Defendants' 7.

The Court: This is a printed copy?

Mr. Loewy: I guess I am doing the same thing again.

The first thing I notice is that the original is dated  
2525 later than the copies. I just wondered—

The Court: You mean the typed original is dated later than the printed?

Mr. Loewy: Yes. That is why—

The Court: That is for cross-examination.

Mr. Loewy: I would wonder before it is offered if Mr. Bergan could ask Mr. Post what it is.

Mr. Bergan: I thought I asked him.

Mr. Loewy: Very well.

The Court: Said one of the original signed copies of Lakewood operator's agreement.

Mr. Loewy: I don't object.

(End of the bench conference.)

The Court: Defendants' 7 in evidence.

(Defendants' Exhibit No. 7 for identification, original copy of operator's agreement, was received in evidence.)

Mr. Bergan: I certainly don't propose to read the entire thing, but there are two numbered paragraphs which I should like to read.

Paragraph 6, dealing with contributions.

I suppose it would make more sense if I read the first paragraph, which identifies the parties to the agreement.

2526 "Operator's Agreement

"The State of Maryland

"County of Montgomery

"Know all men by these presents:

"This agreement made and entered into on this 15th day of July, 1959 by and between Lakewood Management Corporation, a Maryland Corporation, with its principal place of business in Montgomery County, Maryland, (hereinafter called 'Operator'), and Lakewood Country Club, Inc., a non-profit Maryland Corporation with its principal place of business in Montgomery County, Maryland, (hereinafter called 'Country Club')."

And then paragraph sixth.

"6. Monthly dues and Contributions.

"Country Club shall immediately set and prescribe monthly membership dues and contributions to be paid to Country Club, or its order, by each member, except that such monthly dues shall not be set at less than the sum of \$12.00, excluding tax, per month per regular resident member, without express written consent of Operator, and shall not commence until swimming facilities are available, and except that from and after January 1, 1961, such monthly dues shall not be set at less than the sum of \$14.00.

2527 The monthly dues received by Country Club shall be disbursed and disposed of in the following order, to wit:

"(a) First, to the discharge of the Federal excise and any other taxes due thereon;

"(b) Next, to the payment of lease rental under the aforementioned sublease and assignment of even date herewith;

"(c) Next, ad valorem taxes;

"(d) Next, any indebtedness incurred by Country Club for capital expenditures, (prior written consent of Operator being necessary to incur any such indebtedness).

"(e) Lastly, all of the remaining amount of such monthly dues income shall be paid over to Operator for the services to be rendered hereunder by Operator."

Paragraph the ninth, entitled "Miscellaneous Income to Operator."

"After completion of the aforementioned facilities, Operator shall be responsible for purchasing and paying for merchandise, salaries, supplies and services incident to the operation of all such facilities covered hereunder. Any profit made on food, beverages, services, merchandise, supplies, etc. shall belong to Operator as partial compensation for its operation and management of such

2528 facilities, and any loss therefrom shall likewise be borne solely by Operator. It is further understood and agreed that all games, gaming devices, bars, tournaments and other activities on such premises shall be under

the exclusive control of Operator and that 100 per cent of the cost thereof be borne by Operator. Any and all income derived from green fees, swimming fees and other similar fees to guests or members shall belong to Operator."

• • • • •

2529 Q. Would you tell us the reason for establishing these four corporations? And let's start with P.A.P. Incorporated. A. The purpose of P.A.P. Incorporated, which is Exhibit 94, was to take from Mr. Simmons assignment of his option on the Glen Hills Club property, and then to become the lessee of that property and in turn to sublet it to the country club.

Q. As I understand, the purpose of PAP, Inc. was to hold the land? A. That is correct.

Mr. Loewy: Your Honor, may we approach the bench? The Court: Very well.

(At the bench:)

Mr. Loewy: I object in advance to this exhibit coming in piecemeal, because by the time it is complete, if it is objectionable, the jury will have seen it.

The Court: What?

2530 Mr. Loewy: Mr. Bergan is starting to write things on the board already. He admits Mr. Post's testimony, and there is something more than just figures. I mean, something like that, it may end up in cryptogram spelling "not guilty" or something.

Mr. Bergan: If I could figure out how to do that.

The Court: You have to rely on their memory.

Mr. Bergan: All right.

(End of the bench conference.)

By Mr. Bergan:

Q. What was the purpose, Mr. Post, of Lakewood Country Club, Incorporated? A. The purpose was to have a corporation that would be entitled to make use of the prop-

erty and secure a liquor license from the appropriate authority and to comply with the special exception that was granted.

Q. What was your understanding at the time you directed that Lakewood Country Club be incorporated, Lakewood Country Club, Inc. be formed, as to the reason for having a separate corporation? A. The Montgomery County regulation with regard to the issuance of a special exception, and in regard to the issuance of a liquor permit, required that a club, as defined in their regulations, be a non-profit corporation.

2531 Q. And what was then the purpose for Lakewood Management Corporation? A. The purpose was to perform the obligations under the management contract and to manage the club.

Q. And finally, the purpose for Country Club Developers, Inc.? A. Its principal purpose was to construct the facilities out at the Rockville location. It was also the sort of a follow-up on the zoning ruling which indicated that Country Club Developers was going to be a lessee.

• • • • •  
2545 Q. Now inviting your attention, Mr. Post, to the period of time in about June and July of 1959, did there come a time when you and your associates caused Lakewood Country Club, Incorporated to be organized formally? A. Yes.

Q. And at or about that time did you meet the persons who were to be the original officers or incorporators? A. Yes, I did.

Q. Will you state who they were and under what circumstances you met them? A. The people involved were  
2546 Paul Rogers and Robert Vranich and Robert Bock. I had previously met Mr. Rogers; but I met Mr. Vranich and Dr. Bock I believe the first time at a meeting at which we had asked that they come to explain the Lakewood Country Club and what their functions would be.

Q. Where was this meeting held, Mr. Post? A. The most

convenient site was the Mayflower Hotel, because it was convenient to all people. And it was on, I think, a Saturday afternoon about four or five o'clock.

• • • • •  
2548 Q. I show you Defendants' Exhibit No. 7 and ask you if that is the document or one of the documents which you have been describing as having been discussed at that meeting. A. Yes. This was the operators' agreement or management agreement.

Q. Now will you relate what discussion took place at that meeting, with respect to this document. A. I explained to the individuals that we did not contemplate that they would actually have anything to do with the operational part of the club; that that was our responsibility, and they were to serve as the officers until some subsequent date when their successors were qualified and elected; and that this agreement would turn over to us the control of the country club itself, from the initial sales development, all the way through construction, and eventually into the actual management of it.

Q. And is it your recollection that that document was signed at that meeting? A. Yes.

• • • • •  
2565 Q. Mr. Post, did there come a time when you and the other developers of Lakewood Country Club formulated an advisory board? A. Yes, there did, approximately June of 1959.

Q. Can you state the purpose of having such a board of advisors? A. One of the purposes was the having access to people who were prominent in the community and who might be conversant with problems that we would encounter here.

Another reason, of course, was the advertising benefit to be gained by having their names associated with our club—notably, of course, Mr. Snead.

A third purpose was to allow us to have some people who were local in the community that the prospective appli-

cants might talk to without actually feeling that they were committing themselves by talking to a representative directly from our group.

• • • • •

2613 Q. How did you intend to raise this kind of money?

A. As a matter of fact, we had told the Zoning Board that we would have to have at least 700 or 800 members during the first year. And the Houston club during its first year had gotten to that level and had managed to sell that many, and we figured we could do just as well. Our price here was a little bit higher but roughly the same membership cost as the Houston club. And we felt, based on our personal conversations with the people in Rockville as representative of the people in that area, that we would  
2614 not have too much difficulty in selling 400 to 500 memberships before the actual construction really came above ground.

Q. Had you figured in these determinations life memberships as opposed to regular memberships, the ratio? A. The regular memberships had a dues obligation which eventually would be a source of income to us and to the Club. But the life membership, in effect, provided that the member was paying about five or six years dues in advance, and this represented the largest single portion of the capital necessary to build a club.

The Court: I think Mr. Post didn't quite get the question. If he did, he didn't give the answer. Didn't you ask him if he took into consideration the proportion of life memberships to regular memberships?

Mr. Bergan: I was thinking in terms of the ratio of life members to regular members. Yes, Your Honor.

The Witness: Based on the Houston Club, we were hoping to get upwards of 150 during the first five or six months, and based on that it would be sufficient to build a facility, and as the bulk of the people came in based on the construction being almost finished, the memberships

would have been sufficient to allow purchase of the land and make a permanent location out there.

The Court: When you say 150, do you mean 150  
2615 life memberships? What would be your ratio to regular memberships?

The Witness: The immediate goal was to have at least \$10,000.00 a month in dues income when the clubhouse and everything was fully opened.

The Court: I am afraid that either I don't understand Mr. Bergan or you.

Isn't your question this: When they were contemplating the costs they were going to incur, did they also take into consideration the ratio of life memberships to regular dues paying memberships?

Mr. Bergan: That was the purport of my question. I may not have phrased it very articulately.

The Court: Let's try it again.

Mr. Bergan: All right, Your Honor. Let me fall back and I will try to get it in context.

By Mr. Bergan:

Q. You just outlined the construction estimates which you and your associates had figured would be your initial costs? A. Right.

Q. I will ask you the same question I asked you one before. How did you propose to raise the money to carry the construction costs? A. We estimated to sell  
2616 around 150 life memberships at \$1,000.00 apiece and perhaps 350 to 400 of the regular memberships at this \$360.00 price. At that point Mr. Anderson promised that we would have some construction on our swimming pool and the price was to be increased to something in the neighborhood of \$550.00 to \$600.00. At this level we figured we could probably sell at least another 300 or 400.

Q. Regular memberships? A. Regular memberships. We were told not to expect to sell very many life memberships because of the experience in the other locations had shown that people might initially be interested in a membership



like that but that the cost was so much higher that you would not be able to sell very many of them in the long range picture, that the people would thereafter slow down and wait and see what construction was actually done rather than buying a promise of something in the future.

• • • • •

2642 The Court: Very well. Defendants' 293, 294, 295 are in evidence.

(Defendants' Exhibits Nos. 293, 294, 295 for identification received in evidence.)

Mr. Bergan: They are reasonably short, and may I read them?

I will start with 295, which is dated February 11, 1960. It is on the letterhead of Crystal Pools, Inc., Royalton at Elm, Post Office Box 156, Bellaire, Texas, Swimming Pool Specialists, Construction, Design, Equipment  
2643 and Repair. Dated February 11, 1960. To Mr. Clark T. Harmon, A.I.A., The Waverly Building, 4630 Montgomery Avenue, Bethesda 14, Maryland.

Dear Mr. Harmon:

We are very anxious to set a starting date for the pools at the Lakewood Country Club.

Would you please bring us up to date and try to set a starting date for as soon as possible, so we can set up a schedule.

Yours very truly,  
Crystal Pools, Inc.

Hamilton H. Anderson, President.

It indicates carbon copies to James Haynes, Wayne Freeland, Dallas, Texas, and Troy V. Post, Jr., Chevy Chase, Maryland.

Defendants' Exhibit No. 293, a copy of a letter dated February 15, 1960, addressed to Mr. Hamilton H. Ander-

son, Crystal Pools, Inc., Post Office Box 156, Bellaire, Texas.

Dear Mr. Anderson:

Please be advised that we are in the process of dealing with the Montgomery County Health Department and have been for the past several weeks.

At this point, before accepting the pool drawings, the Health Department has required us to design a  
2644 bath house and also to rearrange the location of the various pools as you had shown. I have another meeting with the Health Department on February 16, 1960, at which time they are to give me the final ruling on your drawings. If any change is required, I will forward them to you via air mail immediately.

Very truly yours,

Clark T. Harmon, A.I.A.

And it indicated carbon copy to Mr. L. Pickett.

Defendants' Exhibit No. 294, copy of a letter dated February 17, 1960, to Mr. Hamilton H. Anderson, Crystal Pools, Inc., Post Office Box 156, Bellaire, Texas.

Dear Mr. Anderson:

As per our discussion, I am forwarding to you a copy of the revised pool layout. This revised location of the pools was directly called for by the Montgomery County Health Department. They feel that more area was needed around the pools, they insist that the children's pool area be segregated, they insist that the eating area adjacent to the snack bar be segregated from the actual swimming area and as you can see, they also required me to design a bath house.

As we stand at the moment, the County is going over the pool drawings and we have another meeting  
2645 February 19, 1960. At this meeting any changes that they have, I will forward to you immediately.

I am forwarding this print to you in order for you to revise your plans. The County insist that your

drawings show the pools in their proper location. They also suggest that you use one filter room for the two main pools, which is to be located under the deck, as I have shown. The filter room for the small pool can be located at the end of the bath house.

I will keep you informed—

Actually:

I will keep you inform as to any further changes that they will require. Please let me hear from you, if you have any questions at all.

Very truly yours,  
Clark T. Harmon, A.I.A.

• • • • •

2745 By Mr. Bergan:

Q. Now, Mr. Post, before the luncheon recess we had just started to discuss Golf Contractors, Incorporated. What was Golf Contractors, Incorporated? A. It was a Texas corporation, the domicile being in the State of Texas.

Q. And did it have any association with the Glenhaven Country Club? A. Yes. They completed the golf course for that country club.

2746 Q. Was this pursuant to some agreement with the Glenhaven Country Club? A. Yes. They were assigned the rights of Mr. Allen, Mr. Pickett and myself to complete the golf course and become part owner of the management company for that country club.

Q. I show you a series of exhibits which have been marked as Defendants' Exhibits 306, 307, 308 and 309, and ask you to examine them and tell me if you recognize them. A. Yes, I recognize these.

Q. Have you examined all four of them? A. Yes.

Q. What do you recognize them to be—without going into detail or reading from any of them. A. You mean by exhibit number?

Q. Yes, so the record will reflect what it is that you are talking about. A. No. 306 is an agreement dated December 4, 1959, providing for the construction of a golf course at the Glenhaven Club. The parties are Glenhaven Country Club, as the first party; and Mr. Allen, Mr. Pickett and myself, as the second party.

No. 307 is an agreement also dated December 4, 1959; and it is between, as first party, myself, Mr. Allen and Mr.

Pickett; and, as second party, Mr. Freeland and Mr. 2747 Hayes. And it is provided that—

Q. Don't go into what it provides. Does it relate to Glenhaven Country Club? A. Yes, it relates to the country club.

No. 308 is a joint venture agreement dated December 7, 1959, between Golf Contractors and Country Club Developers.

And No. 309 is an agreement dated December 8th, 1959, between Golf Contractors, Incorporated and Mr. Allen, Mr. Pickett and myself.

Q. Does each of these three agreements relate to Golf Contractors, Incorporated and the Glenhaven Country Club? When I said "each of these three agreements," I mean "each of these four agreements." A. Yes; they all relate to the same country club. And I think Golf Contractors is not a party to one or possibly two of the agreements.

Mr. Bergan. I offer these four in evidence, Your Honor.

Mr. Loewy. May I see them a moment, please? (The offered exhibits were handed to Mr. Loewy.)

No objection, Your Honor.

The Court. Very well. Defendants' 306, 307, 308 and 309 are received in evidence.

2748 (The four agreements heretofore marked for identification as Defendants' Exhibits 306, 307, 308 and 309 were received in evidence.)

Mr. Bergan. I should like to read 308.

The Court. Very well, sir.  
Mr. Bergan. This is captioned

"Joint Venture Agreement

"Agreement made this 7th day of December, 1959, by and between Golf Contractors, Inc., a Texas Corporation, hereinafter called 'Contractors', and Country Club Developers, Inc., a District of Columbia Corporation, hereinafter called 'Developers'.

"Whereas, Contractors has secured a contract for the completion of a golf course located in Houston, Texas, and

"Whereas, Developers has had experience in such work and is desirous of joining with Contractors on such construction; and

Whereas, the parties hereto desire to set forth their understanding in regard to their participation in such construction.

"Now, Therefore, in consideration of the foregoing and other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

2749 "1. Contractors shall proceed to do all things necessary for the completion of the golf course located in Fort Bend County, Texas, such course to be located on the property known as Glenhaven Country Club, in accordance with the contract between Contractors and Glenhaven Country Club.

"2. Developers agrees to provide sufficient monies to Contractors to complete such golf course in accordance with such contract, but in no event shall Developers be required to provide more than One Hundred Twenty-five Thousand (\$125,000.00) Dollars for such construction.

"3. All of such money advanced to Contractors shall be repaid to Developers out of the money received by Contractors for such construction, plus Contractors shall also pay to Developers the sum of Six (6%) per cent per annum on the total of all monies so advanced.

"4. In addition to the repayment as aforesaid to Developers, Contractors does also agree that Fifty (50%) per cent of the net profits accruing to Contractors on account of such contract shall likewise be paid to Developers, whether such profit shall be in form of money, securities, contracts or whatever.

"5. It is further agreed by both parties that Contractors shall be the disbursing agent for such funds  
2750 as are advanced by Developers and shall send to Developers the invoices, statements and other memorandum pertaining to the expenses incurred and paid and disbursements made, to the office of Developers, 760 Warner Building, Washington 4, D. C."

And it is signed on behalf of Golf Contractors, Incorporated by Troy V. Post, Jr., and Country Club Developers, Incorporated by L. W. Pickett.

(Three Glenhaven Country Club promissory notes to the order of Golf Contractors, Inc., dated July 1, 1960, June 1, 1960 and January 1, 1960 were marked for identification as Defendants' Exhibits 310, 311 and 312, respectively.)

Mr. Loewy. Your Honor, now that those other three are in evidence, could we have the signature on the other three contracts read?

Mr. Bergan. I will be glad to.

The Court. Yes, surely.

Mr. Bergan. No. 306 is signed—and I said I would be glad to. (To Government counsel:) See if you can agree with me what this name is.

Exhibit 306 is signed "Glenhaven Country Club, Incorporated, by J. E. Hayes (Agent)," identified as "First Party." It is signed, "Accepted, James E. Hayes" and "C. Wayne Freeland." And it is signed, "Second Party: Bill M.  
2751 Allen," "Leroy W. Pickett" and "Troy V. Post, Jr."

Exhibit 307 is signed, "First Party, Troy V. Post, Jr." "Bill M. Allen" and "Leroy W. Pickett." "Second Party, James E. Hayes" and "C. Wayne Freeland."

Exhibit 308 is the one I just read.

The Court. What was that, again?

Mr. Bergan. That was signed by Post for Golf Contractors, Incorporated, and by Mr. Pickett for Country Club Developers.

And 309 is signed individually by Mr. Allen, Mr. Pickett and Mr. Post. It is also signed "Golf Contractors, Incorporated, by Bill M. Allen." And Mr. Allen's signature for Golf Contractors, Incorporated is attested to by Troy V. Post.

By Mr. Bergan:

Q. Pursuant to the agreement I read, Mr. Post, Defendants' Exhibit No. 308,—

Mr. Bergan. I'm sorry, Your Honor. I didn't realize you were looking at that.

The Court. Very well. I have seen 310, 311 and 312.

(They were then handed to Government counsel by the Clerk.)

By Mr. Bergan:

Q. Pursuant to that joint venture agreement which I just read, Mr. Post, was money made available to Golf 2752 Contractors, Incorporated for use of the Glenhaven Club? A. Yes, it was.

Q. I show you what have been marked as Defendants' Exhibits 310, 311 and 312, and ask you if you recognize them. A. Yes, I recognize these.

Q. What do you recognize them to be, sir? A. They are copies of the form of note used in exchange for which Golf Contractors would do monthly work at the Glenhaven Club and would receive a note similar to this, except as to amount, of course, each month. These are—

Mr. Loewy. I object to that, Your Honor.

The Court. I sustain that.

You will disregard that.

By Mr. Bergan:

Q. Can you identify those documents which you have?

A. Yes.

Q. And what do you identify them as, without saying what they might be similar to or what might be similar to them? A. No. 310 is a copy of a note dated July 1st, 1960, from Glenhaven Club, and——

Mr. Loewy. That is the same as reading it, Your Honor.

The Court. It is a promissory note, isn't it, sir?

The Witness. Yes, it is.

2753 The Court. July 1st, 1960?

The Witness. Correct.

No. 311 is a promissory note dated June 1st, 1960—or a copy of a promissory note.

No. 312 is a copy of a promissory note dated January 1st, 1960.

Mr. Bergan. I offer those three in evidence.

Mr. Loewy. I object to them, Your Honor. They are not signed. There is no testimony that they have anything to do with anything.

The Court. Do you have the originals?

Mr. Bergan. The originals were returned when the notes were paid off, Your Honor. I have no idea where they are.

The Court. Did you ever see the originals of those notes?

The Witness. Yes, sir.

The Court. Let the witness see them, Mr. Bergan.

Mr. Bergan. Yes, Your Honor (placing the three last-marked exhibits before the witness).

The Court. Do you recall who signed Defendants' 310, the July 1, 1960 note?

The Witness. Not on behalf of Glenhaven Club, no, sir.

2754 The Court. But you do recall there was an original of that which was signed by someone for and on behalf of Glenhaven?

The Witness: Yes, sir.



The Court. What about the guarantee at the bottom? Was that signed?

The Witness. Yes, sir. Both Mr. Hayes and Mr. Free-land signed it.

The Court. Take a look at 311. Was an original of that signed by someone at the Glenhaven Club, do you remember?

The Witness. Yes, sir; it was.

The Court. And was the guarantee signed by the people indicated as the guarantors?

The Witness. Yes, sir; both of those individuals signed it.

The Court. How about 312; was the original of that signed by someone for and on behalf of Glenhaven?

The Witness. Yes, sir.

The Court. And by the guarantors?

The Witness. Both of those individuals signed it.

• • • • •

2766 Q. Mr. Post, in connection with Defendants' 310, 311 and 312, pursuant to what agreement were those notes issued? A. Pursuant to the December 4th agreement and the assignment thereof.

Q. Between what parties? A. Between Glenhaven Country Club and Mr. Allen, Mr. Pickett and myself, and then ultimately Golf Contractors.

Q. And when was the first—are these three of a series of notes? A. Yes, sir.

Q. How many were there in the entire series? A. My recollection is that the last one is dated 1 August, and the first was 1 January. So there would have been eight. The aggregate amount was approximately \$102,000.

Q. I see that these bear different dates and are in different amounts. How is the amount of each note determined? A. The attorney for Golf Contractors would total the amount expended each month and submit a note to Mr. Lewis at Glenhaven for signature.

Q. How much was expended for what? A. For the golf course construction.

2767 Q. And you say there were notes running from January 1st through August 1st? A. I believe August was the last, yes, sir.

Q. So are you saying, then, that \$102,000 was spent for the golf course at Glenhaven? A. That's correct.

Q. That's how much was paid out by whom to whom? A. By Golf Contractors to many different people, people who did the work on the golf course, not one company. They were the contract, and they employed other people to do the work.

Q. And you are saying that \$102,000 was actually sent to these contractors? A. Directly for the golf course. There was an additional \$2,000 for insurance on the premises.

• • • • •

2823 By Mr. Bergan:

Q. Now, within a day or so thereafter were you served with a lawsuit brought by Mr. Hepburn and his group? A. Yes, about three days later.

Q. I hand you defendants' exhibit number 34 for identification and ask you if you recognize that? A. Yes, I recognize this.

Q. And what do you recognize that to be? A. This is a photostat of the pleadings filed in the District Court executed by Mr. Davis as attorney.

Q. Is that a copy of what was served upon you a day or two after the meeting that you have been discussing? A. Yes, it is.

Mr. Bergan: I offer defendants' 34, Your Honor.

Mr. Loewy: No objection.

The Court: It is in this Court anyhow, isn't it?

Mr. Bergan: It is in this Court; yes, sir.

The Court: Very well, defendants' 34 is received in evidence.

• • • • •

2825 The Court: Mr. Bergan, I assume that you are offering defendants' exhibit 30 for identification?

Mr. Bergan: Yes, Your Honor, I will offer it.

• • • • •  
2827 Mr. Bergan: I think there are a couple of answers to it, Your Honor. Number one, Mr. Loewy introduced the fact of the lawsuit, which was first brought into evidence during the testimony of Mr. Hepburn during the Government's case. Mr. Hepburn testified that on or about March 15th. I think he put it later in the month. But Mr. Hepburn testified that in March this particular lawsuit was filed. Now, this is the basic paper by which the lawsuit was terminated.

I think, first of all, the Government having introduced evidence of the lawsuit having been filed, we are entitled to have evidence brought forward as to the manner in which the lawsuit was terminated.

But I think over and above that we are in a situation here where the indictment charges a criminal scheme beginning in 1958 and going on through 1964, through the date of the indictment, which is sometime in 1964. There has been no real objection raised by the defense or no real argument raised by the defense but that the mails were used in the carrying out of this scheme. The only  
2828 question, therefore—I wanted to say procedural but that is not right—the jurisdictional question being aside, the only real question is whether there was a scheme to defraud.

Now, here we have a document signed by the representatives, several of the representatives, of the persons allegedly defrauded, which recognizes that the money which these defendants took was fair and reasonable compensation for what they gave.

We are in a situation where Mr. Loewy has already conceded that these people started to build the country club. I think that the record adequately reflects that they built everything except, perhaps, the last 40% of the club-

house. The golf course was built, the swimming pools were built and the tennis courts were built. But yet Mr. Loewy has said time and time again, if not directly by implication, that because these defendants took so much money out of the membership proceeds, in effect, took so much money off the top, they weren't in a position to complete the club and to build the club in the manner in which they had represented to the members that they would.

Now, we have a signed document on behalf of the members of the club which recognizes that the monies taken by Post, Allen and Pickett, or taken on their behalf, is—and I have forgotten the exact language. I think it says fair

and reasonable compensation for the services rendered to the Lakewood Country Club. I think that

is in paragraph 4 on the next to the last page. I think, in addition, there is an analogy here, Your Honor, to the cases. I don't have them at my fingertips, but there are cases in the mail fraud field and in the stock fraud field, where evidence that when a complaint is received by the defendant—Or let me try to put it in context rather than put it in the abstract.

I set up a mail order house and I send brochures all over the country and say send me \$100.00 and I will send you a big box of china, or something of that sort. And I get a thousand replies from all over the country and I answer some and send out the china but I run out of china and can't fill some of the orders. So I get complaints and I immediately make refunds to these people sending complaints. Certainly, that is admissible as going to my intent to defraud, that is with respect to every complaint I receive I send the money back. It is not determinative but it is a factor for the jury to consider, and as I understand the cases they so hold.

Now, here by this document I think there is an analogy here which I suggest is a very good one. These people brought a lawsuit against the promoters, against the developers, a complaint—and as a part of the lawsuit—and that is the reason I offered it in evidence—and they asked

that the developers turn over to the country club  
 2830 their entire interests PAP, Country Club Developers and Lakewood Country Club and hold in trust, as the basic theory of the lawsuit originally was kind of a constructive trust concept. And this is just what happened at the end of the lawsuit, they turned over to the members as a result of this release and settlement papers all of the assets of PAP, Country Club Developers and Lakewood Country Club. But here we have got a situation where in response to a complaint, in this case not a complaint through the mails but a complaint filed in this Court, the members are given—it is not voluntarily—essentially what they ask in the complaint. And in signing these mutual releases—I think Your Honor is quite correct in categorizing what this is—there is a recognition that what the members have received from Post, Allen and Pickett and what Post, Allen and Pickett have received from the members by way of commissions, advances, fees and monies paid on their behalf to other corporations was a fair and reasonable compensation. It seems to me that this is a recognition by the members actually defrauded or allegedly defrauded that they weren't the victims of a fraud.

Now, I don't suggest for a minute that this is determinative. If it was I would have had a motion on file here months ago on some collateral estoppel theory. But I lost a case to Mr. Loewy like this about three years ago when I  
 2831 tried to raise a similar theory, or it was to one of his associates in the Department.

The Court: Was there a general release there too?

Mr. Bergan: I had a judicial finding there, that the conduct of my defendants was within the law in a civil case. Notwithstanding that judicial finding then and opinion, in the same Court before which the criminal case was tried they were convicted criminally of the same conduct which was judged or the Judge had found did not violate the law in a civil proceeding.

The Court: Did you get that into evidence—

Mr. Bergan: I did.

The Court: That judicial finding?

Mr. Bergan: I got it into evidence. The case is United States versus Bertucci in the United States District Court for the Eastern District of Pennsylvania. The District Court Opinion is not reported. The convictions were affirmed by the Third Circuit.

The Court: Was there any reference made to that particular item?

Mr. Bergan: No, sir. I was trying to go further in the Third Circuit on an argument that not only was it admissible because it had, in fact, been admitted, I was trying to go further on argument that it was collateral estoppel.

The Court: They made no reference to the fact 2832 that it had been in evidence at all?

Mr. Bergan: They made no reference to the fact that it was even admitted in evidence. However, it was admitted in evidence and I was permitted to argue to the jury from this document.

The Court: Mr. Bergan, isn't this a little different theory now? That is where the Court itself in the Bertucci Case, as I understand it, in a civil action entered a judgment and made a judicial finding that there was no civil fraud; is that right?

Mr. Bergan: Well, it wasn't a fraud case. It was totally out of the fraud area.

The Court: I see, the civil case?

Mr. Bergan: Neither of them were fraud.

The Court: Excuse me.

Mr. Bergan: They were cases brought under a labor bribery statute that had both civil and criminal provisions.

The Court: But, in any event, there was a judicial finding in the civil action that there was no right to recover as far as the plaintiff was concerned because there was no bribery, or something like that?

Mr. Bergan: That is essentially it; no intent was what was found.

The Court: So there were findings and conclusions  
2833 and that is what you got into evidence in a criminal case; is that correct?

Mr. Bergan: That is right, Your Honor.

The Court: Well, of course, that is a little different situation. Let me give you a hypothetical case. Let's assume that a man sets up a fraudulent scheme, and he goes about putting into operation the scheme through the mails. And he takes some old widow for everything she has got. And about that time the Government becomes aware of it and they start moving in on him and they indict him. And this old widow is the kind of a girl—Well, actually, there was a case. What is that case in the Supreme Court? One of the Justices or the Chief Justice had considerable enjoyment in writing about the girl down in New Mexico. It was one of these mail fraud cases where this handsome, dashing man came along and invited this widow out for cocktails and pretty soon she was buying hotels for him and a few other things. But, in any event, let's assume the widow in that case became so enchanted with this man that she released him from any liability that he might have with respect to her for the taking of her property by fraud. Would that preclude the United States? Could the widow release the criminal act?

Mr. Bergan: No, Your Honor. And I don't suggest that this release is a bar to this prosecution. But, if the  
2834 widow in that release said, all money that I gave to you I got what I paid for, then I suggest that handsome, dashing man can use this to argue to the jury that there was no fraud.

The Court: Well, I don't see Father Duffy's name signed here [indicating to defendants' exhibit 30 for identification.]

Mr. Bergan: This document, as I understand it, is a civil action release signed on behalf of the members of the Lakewood Country Club. Mr. Hepburn testified to this, when I was permitted during his testimony to examine the circumstances of the signing of the document. By direction



of the Board of Directors, the Board of Directors authorized the lawsuit and they authorized the settlement of the lawsuit. And Father Duffy was a member of the Lakewood Country Club. I suggest that this suit, although not so styled, was really a derivative action for the members of the Club. Here is a document signed by the representatives of the Directors of the Club.

The Court: It says: "Lakewood Country Club, a Lakewood, Maryland, Corporation, William A. Hepburn, George Estok, William Eull, individually and in their own right or as Officers and Directors of the Lakewood Country Club, Inc., and as representatives of the members of the Lakewood Country Club, Inc., as a class, hereinafter referred to as the second party"——

They may have attempted to say for Father Duffy, 2835 nobody defrauded me, but I don't think they can do it. Father Duffy said, yes, I was called upon, my brother was called upon and one of our friends was called upon, and we were all told for life memberships we would have to pay nothing more; no assessments, etc. And I could not have afforded to join a club in which I would have to pay dues. Now, can Mr. Estok, Mr. Hepburn and Mr. Eull come around and say, by this agreement, Father Duffy wasn't defrauded at all? I am assuming it, you understand.

Mr. Bergan: I understand, Your Honor. I think they can, Your Honor. I think they can. I might have a different problem if Father Duffy were to file a civil lawsuit under some breach of trust or fraud provision. Then I would be faced with that flat problem, does this release run to the members of the club? And I suppose you would run into procedural problems as to whether this was really a class action. I don't think there is any question but what it was. Was it properly settled in accordance with Rule 23 of the Federal Rules, with notice of the settlement being given to the class, etc., etc., as a result of which the class would be legally bound by this judgment. Now, those questions would come up if Father Duffy or——



The Court: A lot of others.

Mr. Bergan: Any of the others named in the indictment were to file a civil lawsuit against us. But as I read the mail fraud cases, they say—the more recent ones at least say—that where the jurisdictional fact of mailing is admitted, or at least not seriously contested—and there is no contest in this case, except for maybe two counts in the indictment where the Government withdrew them because they were unable to prove the mailing—where the jurisdictional fact of mailing is virtually uncontested, then everything which goes to the question of the fraud or the intent of the defendants should be admissible, its weight to be determined by the jury in accordance with the proper instructions.

Now, I think that is the situation we have here. We have got a settlement of a lawsuit within the indictment period, within the period stated in the indictment, where the Government was the first party to put in evidence the fact that the lawsuit was started. I think simply for that fact we are entitled to show (a) that the lawsuit was ended and, (b) how it was ended.

But over and above that, we have got a recognition in this case by some of the persons allegedly defrauded and by the representatives of the class allegedly defrauded. The indictment speaks in terms of the members of the Lakewood Country Club or prospective members of the Lakewood Country Club as being the ones defrauded. We have got a recognition in this document, that the monies which Pickett, Allen and Post received personally or which were paid on their behalf was reasonable compensation for what they gave.

Now, this is not absolutely dispositive. I will be the first to concede that. The jury may concede or conclude that 30% return was too high, and they may feel that 10% was too high. But here are representatives who have said, and according to Mr. Hepburn's testimony, after full knowledge of the figures. Do you recall his testimony, that he was in fairly close contact with Vinton Lee on the one hand and

with the attorney, Mr. Davis, on the other hand? After full knowledge of the figures, they concluded that what was received was fair and reasonable compensation.

Now, there is another facet to this precise point. We have placed in evidence—either we did or Mr. Loewy did—I kind of got lost in the paperwork at this point—a commission agreement, which provides that Pickett, Allen and Post—actually there is a commission agreement running between Lakewood Management Corporation and Allen and Associates, whereby for the sales work on the club they are to receive 30% of all membership sales, and then I think an additional 1% or 10% of dues. I have forgotten which. I represented to you last week that our figures will show that all of the money which was paid to them or on their behalf falls within this 30%.

2838 Now, Mr. Loewy, I know, is going to argue that this contract isn't any good, that they entered into a contract with themselves for all practical purposes. But now, this contract was in some time in 1958-'59, rather, early '59. And here come the members or the representatives of the members—In fact, the Lakewood Country Club is the actual signatory by Hepburn, Elstok and Eull. In 1962 they say, what you received was fair and reasonable compensation. I think you can read the two together. I think you can read the commission agreement of 1959 and this settlement document of 1961 as a recognition by the Lakewood Country Club in 1961 that the money they received pursuant to this commission agreement which was entered in 1959 was properly received by them.

I think this is yet another reason why this recognition on behalf of the representatives of the Lakewood Country Club is admissible.

The Court: Let's assume for a moment that it is received in evidence. Then wouldn't the Government, in its rebuttal case, have the right to bring in Vinton Lee and everybody else and we would be trying the receivership case again? Are we going to try a collateral case? Why was there a general release?

Mr. Bergan: Do I think they would be entitled to do this?

2839 The Court: To rebut the effects of this.

Mr. Bergan: I don't think so, Your Honor. I don't think they would be entitled to go behind the release. Now, I think it was Judge Hart, who signed an order based upon this release.

The Court: In this criminal case?

Mr. Bergan: No, in the civil case, Your Honor. That order, perhaps, could go in evidence. But, as I understand the law with respect to settlement agreements, you can't go behind the agreement to re-litigate why.

Now, I would agree with you that the Government could bring in Vinton Lee or anybody else who had knowledge of the civil case to show that Pickett, Allen and Post, if this be the fact, fought this every inch of the way up until the time they settled, that this was not something they just handed over voluntarily as soon as the complaint was filed. I would say they could go that far. But so far as re-trying the civil case and what led up to this document, I think the cases—and, again, I don't have them here, but my recollection of the cases under settlement agreements—say that they must be permitted to speak for themselves. You are getting into negotiations at that point.

The Court: Insofar as the settlement agreement terminated the litigation that you are involved with. This  
2840 is a different piece of litigation. This is a criminal action. You offer this to show evidence of good intent, good faith, on the part of the defendants here.

Mr. Bergan: I should go one step further. I do offer it for that purpose. I offer it to complete a transaction which the Government has started, id, the lawsuit. And I offer it as a recognition on behalf of the persons allegedly defrauded that they weren't defrauded, the recognition signed by them after full knowledge of the facts. I really offer it for those three bases, Your Honor. Not as cumulative but——

The Court: If the last one could stand, as you said earlier, you would have been out of this Court before you got to a jury case, wouldn't you?

Mr. Bergan: No, Your Honor, because, as I understand the law, the Government can still proceed even though the victim doesn't think he was defrauded.

The Court: That is exactly what I am talking about, trying the collateral case, because then the Government brings on these witnesses, and the Government brings on Father Duffy. And Mr. Loewy says, now, Father Duffy, did you know anything about this case? No, I didn't know anything about it. And then he brings on Euul and Hepburn and Estok, and he says, your name is on here now. Is it your position that you were not defrauded? Oh, no, what our position was the well was dry. There  
2841 wasn't any money, so we did the best we could under the circumstances; and this is the best agreement we could work out.

Mr. Bergan: I think they are entitled to show that. But I think I am entitled to have in evidence a signed document by these people which recognizes that what Post, Allen and Pickett took was fair compensation for what they gave.

Now, if this document had a line in it that said, we don't think we were defrauded, that is one thing. And, obviously, I couldn't offer that because it is a conclusion in a criminal case. But I think I am entitled to argue to the jury to that, that the club had agreed that the monies going to Post, Allen and Pickett was compensation for that club they built out in Rockville. I think this is a question for the jury. I don't argue that this is of extraordinary probative value, but I think it is of sufficient probative value on the issue of fraud, on the issue of what happened, and on the issue also of intent, although less on that, I think, to be admissible, to be read to the jury, and to let the Government rebut it in any way that it sees fit and that Your Honor will allow them to.

The Court: I can't see how we can avoid trying the receivership case, Mr. Bergan, assuming otherwise its admissibility.

Mr. Bergan: I am sorry, Your Honor, but I don't follow that.

The Court: Well, the point is that you say I want 2842 this in evidence. It is in evidence they settled the case. You say, among other things, that these people recognized that they were not defrauded in the sense that this is a reasonable commission payment.

Mr. Bergan: Exactly. And I think that is one of the issues here, whether these defendants took too much money for what they gave. And here is a recognition by the people that they gave this club to that they didn't take too much money.

The Court: But then we have the rebuttal case and the Government starts bringing in people. Why was this general release signed? What was the situation? And then we are trying that, aren't we?

Mr. Bergan: I think they are impeaching the release if they do that.

The Court: But the release goes to the civil action, it doesn't go to this criminal action. They have got a right to develop what the intent of the parties was insofar a rebutting the good faith defense.

Mr. Bergan: I question though they have the right to go to the intent of the parties with respect to a document which is otherwise clear. Now, I don't quarrel that they can bring Father Duffy in and say, did you ever hear of this, and have him say no. I don't think they could 2843 bring Hepburn, Estok and Eull, or whoever the other signers of that document were, and say to them, what did you mean when you signed this document.

The Court: I would like some authority on this.

Mr. Bergan: I think that was the exact situation in which I was in with Mr. Post yesterday and last week with respect to those two commission agreements.

The Court: I would like some authority on that because I am a little troubled with it.

Do you have any authority on your position, Mr. Loewy?

Mr. Loewy: None, Your Honor, but I think I could bring in a great deal of authorities if Mr. Bergan would cite one theory for admissibility.

The Court: He has got three theories. One that you opened up the matter——

Mr. Bergan: Your Honor, I started to articulate three separate bases.

Mr. Loewy: First of all, I don't agree that we opened up the case. I submit that if we go through the transcripts, we will find that on the cross examination of each and every victim, and virtually 90% of them, I think, testified before Mr. Hepburn, and Mr. Bergan extracted a statement from almost every one of them, well, I dropped out of the club after the membership took over and after the Court  
2844 got into it or something. I haven't read the transcripts and I can't point to the places, but I think we will probably find a dozen places before we get to Mr. Hepburn, where some victim, in response to one of Mr. Bergan's questions, has made a reference to the Court doing this and the Court doing that.

As I stated when we were talking about this the first time, I believe, some days ago, I asked Mr. Hepburn, simply, to put the question, whether suit was filed. Now, the opening the door theory, I concede, it is abused more by the Government, I think, than it is by the defendants, but I don't really think that it is any basis for admitting everything that relates to anything that is mentioned in one sentence in an answer by a witness.

The Court: I don't know what we are talking about right now, opening the door theory abused more by the Government than by the defense.

Mr. Loewy: Well, Mr. Bergan is contending, apparently, that we opened the door on the civil proceeding.

The Court: I thought you just said you didn't and then you said he did?

Mr. Loewy: I think he did, as a matter of fact. But I am contending, on the other hand, even if we did that doesn't mean that everything that happened thereafter is admissible. Now, in big letters I have here my  
2845 second contention, which Your Honor pointed out to Mr. Bergan, and that is I would try at least to bring in all the circumstances paper by paper from the civil proceedings because, as a matter of fact, this was entered into because the defendants in this case had the membership over a barrel. Just by virtue of the civil calendar alone there would be no club. Mr. Lee, the conservator, I believe, stated that in several papers filed with the Court, that unless something happened pretty quick there is not going to be any club to litigate about. And I believe there isn't any question that it was under this type of pressure that this settlement agreement was entered into.

Now, Mr. Bergan's version of some of the mail fraud cases I don't agree with. I don't agree that they hold the way he says they hold. I don't see the analogy to the sending the money back after you get a complaint at all because in this case they didn't send the money back. There wasn't any money. They are just getting someone to say something in an agreement so they can get on with some other business.

The Court: Perhaps the analogy should be carried a little bit further. Suppose the complaint came into this china seller, and the china seller wrote back and said, I am returning herewith your \$100.00 and would appreciate hearing from you your views on this whole thing. So the  
2846 otherwise purchaser writes back and says, well, I thought that was a fair price and I am just sorry you didn't have the china. I suppose you have got to go a little bit farther than just the complaint to know what Mr. Bergan is talking about. What he is actually saying here, I think, in essence, Mr. Loewy, is by this release the Government of the United States has entered into it, through other parties, a release of a criminal action. Now, he said he could get a judgment on the motion to



dismiss, but the effect of it going to the jury goes to that point. I think, Mr. Bergan, you have got to say that.

Mr. Bergan: Excuse me, Your Honor. I don't think it goes that far, Your Honor. Could I have the release a moment?

The Court: Surely.

Mr. Bergan: Paragraph 3 of this agreement says that the first party, and the first party is Post, Allen, Pickett, PAP, Country Club Developers, Golf Contractors, Lakewood Management—

The Court: A Delaware Corporation and everything else.

Mr. Bergan: Several of them.

The Court: All of the defendants and corporations except the Country Club.

Mr. Bergan: That is right, Your Honor, all of the defendants' corporations. [Reading] "The first party 2847 agrees that it will forthwith transfer, assign and convey to Lakewood Country Club"—that is the plaintiff in the suit—"all of the assets of all of the first party corporations . . ." And I am excising but that is essentially what it says. "... subject to the claims of various creditors. Lakewood Country Club recognizing that the first party"—that is, again, all of the corporations—"has effectively divested itself of all assets pertaining to Lakewood Country Club agrees to an indemnity agreement."

And then in the next paragraph Lakewood Country Club says: "We agree that all of the money which Post, Allen and Pickett took is fair and reasonable compensation for what they gave us. They gave us a Country Club or the major part of one and they gave us all of their allied corporations such as they are."

Now, out of some of those allied corporations came back into Lakewood during this period of the receivership some of the money we were talking about yesterday, from Golf Contractors, for example, but this is all by way of saying that I am not arguing that this is in the nature



of res judicata or collateral estoppel. All I am arguing is that here is a recognition on behalf of some of the people allegedly defrauded. I go further than that, on behalf of representatives of all of the people allegedly defrauded.

That what these people took was in exchange  
2848 for what they gave. And I think it is admissible for that purpose. Your Honor may restrict its use by instructions. I haven't reached that stage yet. And I am, frankly, not sure how restrictive you can properly get instructions. But, it seems to me, this necessarily has to go to two questions, and I put aside for the moment who opened up what and whether we are entitled to close it down. This, necessarily, goes to two things. It necessarily goes to whether there was, in fact, a fraud, because the people allegedly defrauded are here saying, we don't think we were defrauded. That doesn't preclude the Government—

The Court: I don't think it is, necessarily, saying that. I think that what they are saying—by putting the best light on it—these three people are saying, so far as the commissions that were paid to the defendants, we do not consider them to be unreasonable. They do not say, however, that when they came and sold us this lifetime membership—

Mr. Bergan: I agree with Your Honor. I overstated my evidence.

The Court: It is a piece of evidence going to the good faith defense, but it certainly doesn't cover the whole.

Mr. Bergan: I agree with that. I have overstated my case and shouldn't have. But, obviously, it does go to the recognition by these people that the money  
2849 which they took was money which they gave value for. It certainly goes to that. It may not establish it conclusively but it goes to that.

Secondly, it goes to this proposition of the old widow with the china shop. A lawsuit is filed and ultimately everything is turned over. All of the first party's corporations are turned over to Lakewood, and this, it seems

to me, whether it is very probative or not, goes to the element of good faith.

The Court: How?

Mr. Bergan: Mr. Loewy said that Mr. Lee says in the civil action file—and I agree with him—that unless this thing is resolved forthwith there won't be any country club, or words to that effect. I have seen this in some of Mr. Lee's affidavits in the file. An indication of good faith, bona fide, during the indictment period; and always within the period of the indictment now is that these defendants in working up this settlement agreement, or working with others to work up this settlement agreement, did so recognizing that if they didn't give up what they had, if they didn't give up what they had, the country club would be no more; just as Mr. Lee says. They could have sat back and contested the litigation, fought it out for two or three years, as the docket of this Court probably would have permitted, and the result would have been, perhaps, a total loss of the Lakewood Club. We don't know. May-

be they could have found financing in that period.  
2850 And, perhaps, by retaining PAP, Golf Contractors and these other corporations these defendants would have had more money in their own pockets over that period of time. But they didn't do that. They resolved this case. They settled this case by this document, by which they turned over to Lakewood all of their interests in all of these allied corporations. And I think this goes to their good faith during the indictment period.

Now, Mr. Loewy may not agree with me that this shows very much, but I think he has to concede that it shows something.

The Court: Well, it could be considered going to the good faith and also be considered getting out of a sorry condition and coming out with at least half of your skin rather than none.

Suppose these judgments came rolling in on PAP, Inc., Golf Contractors, Country Club Developers and Shore

Club Estates? Now, they might have had staggering judgments against them.

Mr. Bergman: If you followed that out, they could have always declared bankruptcy.

The Court: That is true.

Mr. Bergan: Your Honor, I think these are matters for argument.

The Court: Well, they might be matters for argument in a civil action between A and B, but I don't see how you can say that goes to the good faith of these defendants at a time when the house is on fire.

Mr. Bergan: It is a recognition that the Country Club was in trouble. There is no question about that.

The Court: That is right.

Mr. Bergan: And, in fact, it had to be recognized a year prior to this, or perhaps 18-months prior to this. The Country Club is in trouble—I am putting myself in the place of the defendants—shall we, at the time of this release, try to bail out our own house, or shall we work with these members trying to bail out their house so that they can get a Country Club, which is what we promised to give them four years ago. We are going to work with the members by giving them everything we have so that they can have their Country Club. Maybe this isn't 100% of what we tried to give them three years ago, but now it is as much as we can give them. We can sit back—and I am still the defendants now—and we can fight this litigation. We can try to rescue the assets of PAP, which is ours, Country Club Developers, which is ours, we can fight judgments all over the country if that is what they want to do to us, and as a result they won't get a Country Club. But we are going to try to work with them, and we are going to try to give them everything we have so that we can come as close to giving them a Country Club as we promised them when we sold them the commissions. I think that is a fair inference from this.

I think it is arguable, just what you said, that the house was on fire and we ran out and rescued what we

could. But I don't think one is so overpowering that the other can't be logically argued. And I think that stated in those terms it is an indication of the good faith of the defendants during the indictment period.

The Court: Mr. Loewy, we have three members of Lakewood Country Club signing this release, as I read it. Is that true? We have Estok, Hepburn and Eull. Now, might this not be admissible as to them with respect to the claim of fraud being worked upon them? It is during the indictment period. The indictment says that this continued from sometime in 1959 to and including the return of the indictment.

Mr. Loewy: But, Your Honor, Mr. Bergan is contending that they are signing as representatives of the victims.

The Court: They may have been signing as representatives—

Mr. Loewy: I am contending that they are not.

The Court: I am just talking about three people now, Estok, Hepburn and Eull. Regardless of how they are signing for others, they are signing also for themselves.

Mr. Loewy: Well, with respect to Mr. Estok and Mr. Eull, I submit, it is not admissible as to them unless they were on the stand in some way or another. With 2853 respect to Mr. Hepburn, he might be asked if he didn't sign this, insofar as he was making a complaint against these gentlemen, and be allowed to explain. But I don't believe a document of this import and of this dignity should come in simply because it happens to be signed by one of the Government's witnesses under certain circumstances. Mr. Bergan is really saying it is some evidence that there was no fraud. I submit there are other ways of establishing that. The document itself does not establish that at all. In fact, one paragraph below it says: "The only purpose of this agreement being to prevent further litigation and to secure a release and discharge of all controversies and disputes which might exist between the parties by virtue of the claims asserted." That just says that the claims are here and we just don't want to

litigate them right now, or we can't litigate them right now. It doesn't have anything to do with the fraud in the past or not.

I submit that we would have a fine answer for the Government if Mr. Bergan were to ask Mr. Hepburn whether or not he was defrauded, even if he did try to impeach his answer with this document. The document simply doesn't stand for it. There is no evidence in it whatsoever of whether a fraud was perpetrated in 1959 or 1960.

The Court: All right, I will think about it. We will take a recess.

• • • • •

2861 The Court: With respect to whether or not Defendants' Exhibit 30 for identification was admissible in evidence before recess, neither the Government nor the Defendants cited me any authorities during the short recess so I attempted to do a little research and I found Ecklund versus the United States, Sixth Circuit, One Hundred Fifty-Nine, Federal Second at Eighty-One and, briefly, the case is this:

Under the 1942 Emergency Price Control Act, there was a price ceiling put on automobiles. A Mr. and Mrs. Nitcks, in 1945, while the Act was still in effect, desired to buy an automobile. They went to the Ecklund Company, which was a car dealer, and they looked at used cars and chose a 1942 Chevrolet Sedan as the car they desired. They then were settling on the car and they were told that the total price with tax was \$1,532.00. They were told to make out two checks, one drawn to the car dealer in the sum of \$1,232.85. The other was drawn to the salesman in the sum of \$300.00. The purchaser did follow instructions and they gave the two checks and shortly thereafter they went to the O.P.A. office and there they were advised they had over-paid in excess of the price ceiling.

They then went to their Counsel and Counsel said, "We will go ahead and see if you can't get a settlement with the car sales people," and they did work out a settlement.

Subsequently, Ecklund, the owner of the car sales  
 2862 agency, was indicted for violating the Price Control  
 Act and, in the course of the trial, the Government  
 offered, and there was received in evidence, a compromise  
 settlement agreement between Ecklund and the Nitcks, the  
 car purchaser. A case conviction resulted. I believe a jail  
 sentence was imposed on Ecklund and appeal was taken to  
 the Sixth Circuit and the case was reversed and I think the  
 pertinent part is this, and I am going to read it from Page  
 84 and 85, One Fifty-Nine Federal Second.

Appellant says that certain authorities which were  
 referred to earlier in the case which would permit being  
 received in evidence and offered as a compromise, insists  
 that these authorities have no bearing here for the reason  
 that the settlement by Ecklund of a civil claim based upon  
 the sale by his agent of an automobile at over ceiling  
 price, would not be evidentiary of an attempt to cite in a  
 criminal prosecution, inasmuch as both civil remedies and  
 criminal sanctions are provided in the Emergency Price  
 Control Act of 1942 for violation is essential to a criminal  
 prosecution while the civil remedies are not limited to  
 cases of wilful violation.

Now, the authorities that Ecklund's Counsel was object-  
 ing to at the time had to do with where there was an arrest  
 made by a Government agent and the charged defendant  
 attempted to say, "Can't we settle this, how long will it  
 take," something like that.

2863 The Court goes on here to say that the appellant's  
 Counsel's contention is sound. Evidence of a civil  
 liability settlement previously made by the defendant in a  
 criminal case of this character would have no real probative  
 value to the effect that he had wilfully violated laws and  
 regulations governing the sales and prices. The defendant,  
 himself, explained, after evidence of his settlement in the  
 civil case had been received over his objection, that he made  
 the settlement of the Nitcks on the advice of his attorney  
 because he did not want any unfavorable publicity to that  
 lawsuit.

There is no proof, whatever, that he attempted to avoid criminal liability by settling the civil claim made by the Nitcks against him. It has long been recognized that evidence of an effort to compromise is admissible in a civil case citing authority. Why, then, should evidence of a settlement of a civil case be received in a criminal prosecution where the essential ingredients of liability are wholly at variance in that no proof or wilful violation is necessary to establish civil liability.

Gentlemen, I realize that is one side of the coin and we are dealing with the other side of the coin but it seems to me that if the civil liability case was settled and cannot be received in evidence to show criminal intent or wilful violation, and there is nothing in this settlement  
2864 compromise that goes to show that the Lakewood

Country Club Board of Directors and the three individuals themselves, and all other members of the club, were settling by seeing that there was no wilful violation. It wasn't offered to me openly, was it?

Mr. Bergan. Not in the presence of the jury.

The Court. I will not make any reference in front of the jury.

Mr. Bergan. I did formally offer it but not while the jury was present.

The Court. I think you did. I will exclude it. Bring in the jury.

• • • • •

2867 Q. Did you give Mr. Peabbles or Mr. Kingston any instructions with respect to the use of the Casa View By-Laws which are referred to in your letter? A. Yes, I did.

Q. What instructions did you give them? A. That the Lakewood By-Laws should be typed substantially in conformity with the printed material with certain exceptions.

Q. What exceptions, sir, if you recall? A. The one section of the By-Laws providing for the agenda of a meeting of the members used numbers rather than letters to iden-



tify the sub-section and I asked that they make that change.

Mr. Bergan. May I have Government's Exhibit 147, 2868 please.

Q. Now, Mr. Post, I hand you Government's Exhibit No. 147 which is in evidence, the By-laws of the Lakewood Country Club and I ask you to read the last sentence of Article Two (c) which appears on the first page. A. "The Board, however, may prescribe minimum spending requirements for any class or all classes of members at any time the Board considers the same to be for the best interest of the Club."

Q. Now I hand you Defendants' Exhibit 6B and ask you to read the last sentence of Paragraph Two (c). A. "The Board, however, may prescribe minimum spending requirements for any class or all classes of members at any time the Board considers the same to be for the best interest of the Club."

Q. Now, Mr. Post, did you or your associate developers ever impose a minimum spending requirement on any of the members of the Lakewood Country Club? A. No, sir, we did not.

• • • • •  
2872 By Mr. Bergan:

Q. I think you answered the last question. Did you arrive at any amount of money, dues income, at which you figured the club was economically feasible in the absence of minimum spending? A. Yes, I did.

Q. What amount was that? A. \$10,000 per month.

Q. How many dues-paying members, if you recall, would have been required to have a dues income of \$10,000 a month? A. Approximately 700.

Q. Do you recall what the dues were? A. The initial dues was \$12.00; the By-laws and the management agreed to provide for an increase to \$14.00, I believe, January 1, 1961. The \$12.00 dues started when the swimming facilities



were available and continued to the \$14.00 permanent date dues.

2873 Q. When would that be?

The Court. And that was January 1, 1961. Is that the calendar date?

A. Yes, sir, it is. It's in the operator's agreement.

By Mr. Bergan:

Q. Now, in making these calculations, in addition to determining monthly dues income, did you make any determination with respect to operational costs? A. Yes, we did.

Q. And what determination did you make? A. That the food and beverage facilities, the golf course rental, the miscellaneous income could be expected on in a club of this size to provide a profitable operation for those particular facilities and off-set the cost of non-income producing facilities such as the swimming pool and golf course.

Q. Did you make any computation or analysis; did you seek any advice with respect to how much these so-called non-income-producing properties drain the club functions? A. Yes, I did.

Q. What such investigation did you make? A. There were several publications of national golf foundations and other statistical analyses which reported averages for country clubs throughout the country and some sections and, of course, there were books of Glen Haven Club  
2874 which were open to inspection. This, of course, was in 1959 but I discussed with people actually in the food and beverage business and determined what the profits expected from liquor, for instance, would be.

Q. Mr. Post, the Glen Haven Club wasn't to be constructed until sometime in 1959? A. The clubhouse was finished and in use when I was in, April or May, 1959. The golf course had been commenced but was not completed in 1960 and the swimming pools were open during the summer of 1960.

Q. How could you have gotten a history of their operation costs when they were practically starting at the same time Lakewood was? A. We used a food and beverage operation which they maintained sometime in 1959 through the end of 1958 when Mr. Smith furnished me with a certified audit of their accounts. Then, of course, they were in operation until 1960.

The Court. The question Mr. Bergan put to you, was this analysis you made in 1959 or early 1960?

A. Yes, in 1959.

The Court. And you were able to get some history across to Glen Haven at that time?

A. Yes, sir.

By Mr. Bergan:

Q. Was the history of cost you got from Glen house, swimming pool and party outside functions. party outside functions.

Q. You weren't considering any of the golf course cost with respect to Glen Haven? A. Only as to the amount they were then paying for the use of their members of another golf course.

Q. With respect specifically to Lakewood, did you consult with any persons in an effort to arrive at an estimated cost figure for the maintenance of the Lakewood golf course? A. Yes, I did.

Q. With whom did you discuss, if you recall? A. Mr. Ault and Mr. Elder who were both actually working on the course itself and on other courses. At a later point we employed a Mr. Oula and I talked with him about what his expenses were and about what he estimated it would cost to keep the golf course in shape and then on another occasion I discussed it with Mr. Bogart and Mr. Brownell and an acquaintance of Mr. Watson who was at a local country club.

Q. Where was Mr. Oula employed before you employed him? A. I do not recall.

Q. As a result of these discussions, did you arrive at a figure at which you estimated that the golf course could be maintained? A. Yes, I did.

2876-85 Q. What was the figure? A. Approximately \$35,000 a year.

Q. And did this figure, or was this figure considered by you in determining that there was no necessity of the imposition of the minimum spending requirement? A. Yes, it was.

• • • • •

2886 Mr. Bergan: I do have about ten minutes more for Mr. Post. I discovered some loose ends that were dangling.

I have a question that I would like to ask—maybe I am out of order in asking it—but this lawsuit has now been injected. I think it is immaterial, but Mr. Loewy has put it in. Will I be permitted to ask Mr. Post simply the questions as to whether the lawsuit was settled, without going into any of the details? I am afraid as it stands now that the jury is liable to have the impression that the members brought a lawsuit against these defendants, that a conservatorship proceeding followed, and now the members have the club. And it seems to me a necessary inference from that, or a possible inference from that, is that the Court took the Club away from these people.

The Court: Well, I suppose, in a sense, the Court did when the Court appointed a conservator, didn't it?

Mr. Bergan: Well, at least temporarily when it appointed a conservator.

2887 The Court: I think that is actually what the questions were going to, as I recall them. The first time I heard "conservator," I thought that must be a mistake, that it must be a receivership, because it was in the nature of a receivership.

Mr. Bergan: I think for all practical purposes it was a receivership.

Mr. Loewy: I understand that Judge Walsh did that purposely, put the name of "Conservator" on it so that it wouldn't look like the thing was bankrupt, from the standpoint of getting other financing.

The Court: Well, that is what they call it. I guess, in essence, it is the same thing. At that time, of course, all power and control of the defendant—

Mr. Bergan: Went to Mr. Lee at that time.

The Court: That's right.

Mr. Bergan: Ultimately it went to the new Board of Directors, headed by Mr. Hepburn.

The Court: That's right. And the testimony was that people began dropping out, and a conservator came into the picture—I mean the life members.

Mr. Loewy, you heard what Mr. Bergan is asking me to do.

2888 Mr. Loewy: Yes. I don't think it would be proper to say that it was settled, except for the curious aspect of whether it was taken away from him. I agree with Your Honor, I think it definitely was.

The Court: Well, you can develop it this way: You can develop that a conservator was appointed, and after the conservator was appointed, you can ask him, was the case settled, and the defendant was out of it from then on.

Mr. Bergan: I wouldn't go any further than that, because at that point we are in the terms of the settlement. I assume that is within the scope of Your Honor's ruling this morning.

The Court: I think so.

2901 Q. Was construction begun on a bath house for the swimming pools? A. Yes, it began in April and finished in about June, 1960.

2902 Q. Was the bath house construction completed? A. Yes, sir.

Q. Had you begun on the construction of a clubhouse or clubhouse facilities? A. Yes, we had.

Q. Had you begun the construction of a Pro Shop or Pro Shop facilities? A. Yes, as a part of the clubhouse.

Q. Had the Pro Shop facilities been completed? A. On a temporary facility. That was a frame building used during the summer of 1960.

Q. Had a portion of the clubhouse itself been started? A. Well, actually all that had been started at the same time, and it was about 60 per cent completed by the end of September 1960.

Q. Was the golf course completed so as to allow play during the year 1960? A. Yes, sir.

Q. Did you have, on the golf course, something in the nature of a formal opening? A. Yes. We had a tournament during the month of September 1960, which was a formal opening of the full 18.

Q. And who participated in that tournament, sir, 2903 if you know?

A. Mr. Snead, who was an advisory Board member, and Arnold Palmer.

Q. I hand you Defendants' Exhibits 316 and 317 for identification, and ask you if you recognize them? A. (Perusing the exhibits.) Yes, I recognize these.

Q. What do you recognize them to be, sir? A. They are both checks on the Lakewood Country Club regular account, both dated September 23, 1960, and my signature appears on both.

Q. Are they checks to Mr. Snead and Mr. Palmer for their participation in the tournament? A. That's correct.

Mr. Bergan: I offer 316 and 317, Your Honor.

Mr. Loewy: No objection; no objection.

The Court: Defendants' 316 and 317 in evidence.

• • • • •

2904 Q. Can you fix an approximate time on which or at which construction of the clubhouse facilities came to a stop. A. I would say October 1960.

Q. Was this because of your inability to make payments on the contract to Mr. Hooper? A. That's correct.

2907 Q. And following the appointment of this conservator, did there come a time when you and Mr. Allen and Mr. Pickett settled this lawsuit with the members? A. Yes; that's correct.

Q. And following that settlement, did you have any further association with the Lakewood Country Club or with PAP or Country Club Developers? A. No, I did not.

Q. Do you know that to be the case with respect to Mr. Allen and Mr. Pickett, also? A. Yes.

2916 Q. Who were the stockholders of the Eden Roc Country Club in Pittsburgh? A. It was a non-profit Pennsylvania corporation, and the members owned a membership certificate. And I frankly don't recall the names of those people.

2919 Q. Now, Mr. Post, we can skip down to the second paragraph. If I may, I am reading from Mr. Melnick's letter, which is identical, I believe. I am reading from Government Exhibit 161, the first page:

"By specializing in this business, we are able to employ professional and experienced personnel in the operational fields of the club, such as restaurant management. Therefore, contrary to the majority of country clubs, our clubs are profitably operated."

Does the letter before you bear that statement, Mr. Post? A. That's correct.

2920 Q. And that statement appears, does it not, in the letter which you sent to Mr. Epstein, trying to get financing in January of 1961? A. That's correct.

Q. Now, Mr. Post, you say, "contrary to the majority of country clubs our clubs are profitably operated."

What club did you or Mr. Allen or Mr. Pickett ever operate profitably? A. Glenhaven Country Club in Houston, Texas.

Q. You operated Glenhaven Country Club in Houston, Texas? A. We were the owners of 50 per cent of the stock of the management company.

Q. Did you ever operate the Glenhaven Country Club in Houston, Texas?

A. I did not actually participate in the restaurant, but I was part owner of the operating company.

\* \* \*

2933 Q. Did you tell the people to whom you sold memberships? A. I can recall only selling three. I have no definite recollection of any of those three persons.

The Court: I'm sorry. You have no definite recollection to whom you sold them, or what you said to them, which is it?

The Witness: No, sir. I made three presentations, and I don't recall specifically any of the individuals, except the names, and that is not independently. It is by reading the membership records.

\* \* \*

2969 Q. Now, Mr. Post, at the time you drew this check for \$100,000.00, and at the time you entered into this deposit agreement, defendants' 44, did you contemplate making this disbursement of \$25,000.00 to Funkhouser Industries? A. Yes, I believe that was contemplated at the same time; yes.

Q. At the same time or before? A. I don't recall specifically.

\* \* \*

2992 Q. Was that for one of the buildings on the Lake-wood Country Club site? A. No, it was not.

Q. What building was that for? A. I don't remember where it was located. It was in the downtown Washington area.

Q. It had nothing to do with the Lakewood Country Club, did it, Mr. Post? A. No.

3012 Q. Now, Mr. Post, would you turn, please, in Government's 107 to the minutes to April 15th, 1960? A. Yes, I have it.

Q. Was that meeting, Mr. Post, held at 4910 Cordell Avenue in Bethesda, Maryland? A. To my recollection, it was either there or at the club site. I don't specifically remember which place.

Q. Mr. Van Veen was not there, was he, as the minutes purport to show? A. I believe he was. I have no particular recollection of the meeting myself.

Q. Were you there? A. Yes.

Q. And Mr. Vranich was not there either, was he, as the minutes purport to show? A. I don't know.

3013 Q. Well, was Mr. Rogers there? He is the third one who is purported to be there? A. I have no independent recollection of the actual meeting, where it was or anything about it particularly.

Q. Mr. Post, when were these minutes drafted? A. I don't recall any particular time, presumably, within 30 to 60 days. That was the normal course, but I don't independently recall these particular minutes.

3015 Q. As a matter of fact, Mr. Post, nobody voted on it, did they? A. I have no independent recollection of the meeting.

3084

**Chester Wayne Freeland, Jr.**

being first duly sworn, was examined and testified as follows:

3085 Q. Do you know the defendants Troy Post, Bill Allen and Leroy Pickett? A. Yes, sir.



Q. Can you state approximately when you met all of the defendants? A. Early '59 or '58, would be about the time.

Q. Do you recall whether you met them individually, whether you met one before you met another, or whether you met them all at the same time? A. I had known Mr. Allen previously to the other two fellows.

Q. And for how long had you known Mr. Allen? Just approximately. A. Oh, golly, probably a couple of years or so before that.

The Court. Is that a couple of years before 1958?

The Witness. Yes, sir.

By Mr. Bergan:

Q. In 1958 were you in a partnership of some kind? A. Yes.

Q. What was your business association? A. A fellow by the name of Jim Hayes and I were partners.

3086 Q. And this was in what area of endeavor? A. It was in the country club field.

Q. Did there come a time, Mr. Freeland, when you became aware of the promotion and development of the Lakewood Country Club in the metropolitan Washington area? A. Yes, about, I would think, in 1959, would be the approximate time.

Q. Do you recall the manner in which you became aware of the development of this club? A. Yes. I was visited by the gentlemen you mentioned, at one of the clubs I was involved in. I know they had looked over the projects that we were doing at the time, and had contacted us, among some other people, relative to, you know, being retained by them to work on the project they had in mind.

Q. You say you were contacted by the gentlemen. By all three—Mr. Post, Mr. Allen, Mr. Pickett? A. I think so. I think, as far as I know, all three of them contacted me at the same time. I'm not really sure.

Q. Did they contact you personally? By that I mean, did they meet with you personally? A. Yes, sir.

Q. Was this here in the District of Columbia area, or was it in some other area? A. It was in, I believe, Dallas  
3087 —I'm not certain—Dallas or Houston, I think is the first time that I met with them. I later visited them here, before the project started, looking at some land with them. But I think the first I met them was in Dallas or Houston.

Q. Inviting your attention to the first time you met these persons, in either Dallas or Houston, wherever it might have been, do you recall the subject-matter of the conversation among you? A. Just that they were planning on doing a club up here, was the subject-matter that was brought up.

Q. Well why was it, if you know, that they contacted you? A. Well, I was in the club business and, you know, had some experience in that line of work.

Q. Did they seek to retain your services, or the services of your organization, to do anything for them in the development of the club? A. Well I think that initially they were "shopping," I guess would be the phrase, you know. And there was another group I think they were also talking to. But they were, you know, inquiring about using us.

Q. Did there come a time, subsequent to this meeting, when you came to the District of Columbia to meet with them? A. Yes, I came up here. They had, oh, different pieces of land that they were thinking in terms of to  
3088 use for the location of the club. And I made a trip up to, you know, look at the, you know, the desirability and feasibility of the ground in question.

Q. Was that the first time that you came to the Washington area, to meet with these defendants about the Lakewood Club? A. I think so, yes. I think that was the purpose of my coming up here.

Q. Mr. Freeland, I hand you Defendants' Exhibit No. 220, which is in evidence, and ask you if you would glance over it.

I ask you whether, having looked at that letter, it helps you fix the time of your first meeting with these gentlemen in Texas. A. Well, the letter is dated November of '58, and it refers to looking at some property. So I would have met them, you know,—

Q. Prior to this date. A. —prior to this date, yes.

Q. Prior to November of 1958. A. Yes.

• • • • •

3090 Q. During the fall of 1958, do you recall whether you came to Washington—and by “Washington” I mean the metropolitan Washington area—on more

3091 than one occasion? A. I don't know. I came up here once or twice. I am not really certain. It might have been a couple of visits. I think it was one visit. But I don't really know for sure. It was one or two times, I would think, but I don't really know how many.

• • • • •

3095 Q. Defendants' Exhibit 227, captioned “Advisory Agreement;” and I ask you to review it and invite your attention specifically to the second from the last page, where your signature appears (handing). And I ask you if that is the agreement by which you and Mr. Hayes were to be compensated for your services in the promotion and development of the Lakewood Country Club. A. Yes, it is.

The Court. What is the date of that?

The Witness. This is June 9, 1959.

• • • • •

3096 Q. Now I am going to show you, Mr. Freeland, Defendants' Exhibits 273 and 296, and ask you if you know what they are, sir (handing). A. Should I wait for a question?

Q. Yes. Do you know what they are? A. Yes.

Q. What are they, if you know? I'm sorry I left that hanging. A. Advertisements for the Casa View Country Club, at Dallas.

Q. Now I show you what is in evidence as Government's Exhibit No. 61 (handing), and ask you if you recognize that. A. Yes, sir.

Q. Did you play any part in the—and I could say “drafting,” but that’s an inartful word—in the formation of what is Government’s Exhibit No. 61? A. Yes.

Q. What role did you play? A. I laid out the ad, and wrote the copy; and suggested this as the type of, you know, approach that should be used.

Q. And did you use the two exhibits underneath this—and I will identify them for the record as Defendants’ 296 and 273—did you use either or both of them as a 3097 format for this large ad in front of you? A. Well, the word “use,” it would be a little gloss to my answer. I didn’t, as I recall, specifically, you know, “use” these. I think the concept of the approach would have been the same. So in that sense subconsciously I would have used, you know, some of the ideas, certainly, or suggested the use of some of the same type ideas.

Q. Did you lay out any other of the newspaper ads that appeared in the Washington papers during the promotional campaign? A. As I recall, I laid out, well, this ad, and maybe one other. I’m not sure of the number. But I did a total of—to grab a figure, because I’m not certain—maybe a couple of ads. I couldn’t, you know, define the number. I did this one, certainly, and possibly another one or so. But I don’t know the exact number.

Q. Did you advise your attorney—well, first of all, who is your attorney, in Dallas?

The Court. Who “was,” at that time.

Mr. Bergan. I’m sorry—who “was.”

The Court. This is 1958 and 1959.

Mr. Bergan. Yes, 1958 and 1959.

The Witness. Golly. I—

By Mr. Bergan:

3098 Q. Maybe I can help you. Was it a Mr. Mackey?

A. He was my attorney at Casa View. Mr. Mackey

wasn't my attorney, per se. He was the attorney of a partner of mine, and I think we utilized his work in Casa View. But he wasn't my primary attorney, no.

Q. Did you authorize or do you know whether your partner authorized Mr. Mackey to make available to Mr. Post certain of the forms of corporate documents to be utilized in a promotion of this type? A. Well, the sense of our agreement——

The Court. That is not the question.

The Witness. I'm sorry.

The Court. The question is do you know whether or not your partner authorized Mr. Mackey—and your partner, now, is that Mr. Hayes?

The Witness. Yes, Jim Hayes; that's right.

The Court. —authorized Mr. Mackey to make available to the defendant certain corporate documents, of the Casa View or some other club.

Mr. Bergan. Or whether he did.

The Court. Or whether you did. Did you or your partner authorize Mr. Mackey?

The Witness. Yes. If I may, Your Honor, it's hard for me to give a yes or no answer.

3099 The Court. Now I tell you,——

The Witness. Pardon me?

The Court. You just tell us, first, whether or not you authorized. And then we will see if Mr. Bergan desires to go any further.

The Witness. All right. I don't specifically recall that we, you know, authorized him. But we would have. To answer the question, Your Honor, anybody in our organization would have given them any information they wanted. I don't specifically recall authorizing him, or anybody else.

The Court. Do you wish to object—"would have"?

Mr. Loewy. Yes, I object, Your Honor.

The Court. All right; we'll leave it alone.

The Witness. Your Honor, I——

The Court. That's all right.

The Witness. I just don't remember specifically who I authorized or didn't.

By Mr. Bergan:

Q. There's no pending question, Mr. Freeland. A. I'm sorry.

Q. I will rephrase the question.

Did you give general instructions, throughout your organization, that any assistance which Mr. Post or Mr.

Allen or Mr. Pickett wanted in this endeavor, they 3100 were authorized to ask your employees or representatives for? A. Yes.

Q. Following the layout of the advertisement or advertisements which we have been discussing, did there come a time when you met with some of the sales personnel for the Lakewood Country Club? A. Yes. Right before the project started, we had a meeting with, you know, everybody involved in the project.

Q. Do you recall whether your partner, Mr. Hayes, was present at that meeting? A. I think he was, as far as I can recall.

Q. Did you have anything to do with the selection of the sales personnel? A. No. I think most of them were local people that these gentlemen had known.

Q. Did there come a time when you provided a sales manager or sales head? A. There was a fellow who had worked for us in the past that came to work for them; that's correct.

Q. And——

The Court. Just a minute. I don't think he has answered your question at all.

I tell you, Mr. Freeland, you're going to help us a lot more if you will listen to that question and just 3101 answer it at the time. The question was, did there come a time when you, with respect to the sales manager or the head of the sales—did what, Mr. Bergan?

Mr. Bergan. Whether he provided a sales manager, or made available a sales manager, to these people.

The Court. All right—and that's the answer—that there was a man. And who was this; the sales manager?

Mr. Bergan. That was my next question, to identify this person——

The Court. All right.

By Mr. Bergan:

Q. —this man's name, that you—— A. Mike Willhite.

The Court. And you provided him as the sales manager; is that right?

The Witness. Yes—or suggested to them that, you know, he was available.

By Mr. Bergan:

Q. And had he been employed by you prior to this time?

A. Yes.

Q. Now can you fix an approximate time for this meeting with you, Mr. Hayes and the salesmen? A. It was right before the project started, just, I guess, a few days, or right at that time.

3102 Q. Perhaps we can try to fix it this way. Can you fix it, in point of time, whether it was before or after the advertising campaign? A. I think it was probably maybe the week or a few days before the first ad appeared.

Q. And do you recall whether Mr. Post or Mr. Allen or Mr. Pickett, or any of them, were present at this meeting? A. I think some or maybe all of them were there. I don't really know which ones might not have been. I think they were all there.

Q. And you were there, sir? A. Yes.

Q. Now will you state, to the best of your recollection, what transpired at that meeting? A. Oh, essentially, these fellows weren't knowledgeable about, you know, country clubs.

Q. When you say "these fellows," do you mean the potential salesmen? A. Right.

Mr. Loewy. Your Honor, I don't believe that is responsive. The question is, what transpired.

The Court. Well, I think he probably was getting to it, perhaps.

Go ahead.

3103 The Witness. We outlined to them the, you know, concept of a country club, you know, the facilities; explained the type of facilities of a country club; oh, some technical data about, you know, golf courses or clubhouses or swimming pools, things that they would need to be aware of, certainly, to discuss a country club intelligently.

By Mr. Bergan:

Q. I will show you, Mr. Freeland, what is in evidence as Defendants' 274 (handing), and ask you if you will glance through that and tell me whether you know what it is. A. Yes.

Q. What do you identify that particular document to be? A. This is the sales brochure that the salesmen used. It shows colored photographs of a club that we had been involved in in the past, to relate the type of facility that was being planned for up here.

Q. Was this document or this booklet made available to the salesmen at the time of this meeting? A. Yes; I'm sure that at that time it would have been.

Q. And do you recognize any of the photographs in that book as being of clubs in which you had an interest? A. Yes. There's a picture of Casa View, Glenhaven.

Q. Were any instructions given to the salesmen at that meeting, if you recall, on how to make use of such a  
3104 booklet? A. Yes. The purpose of the photographs, as I just mentioned, was to show the type of facility that was being planned, for the Washington, D. C. area; that this was the concept and the quality of facilities that was going to be built here.

Q. Had you discussed, with Mr. Post or Mr. Allen or Mr. Pickett, the type of facility that was being planned for the Washington area? A. Oh yes, certainly.

Q. And in the course of your discussions, did you discuss the size of the clubhouse? A. Yes. It was essentially patterned after the clubhouse in Houston, which was about, oh, 28,000 to 25,000 square feet, as I recall, about that size.



Q. Is Houston the Casa View, or Glenhaven? A. Glenhaven.

Q. Glenhaven? A. Right.

Q. And the footage? I'm sorry; I interrupted you on that. A. Oh, 28,000 or 25,000 square feet, is about what it was.

Q. Did you discuss with them the type of golf  
3105 course or the length of the golf course? A. Yes. I discussed with them, you know, all the various type facilities.

Q. Did you discuss with them the swimming facilities? A. Yes.

Q. During the course of these discussions, Mr. Freeland, did you and they discuss—and at this time we are in July of 1959, or prior thereto—did you and they discuss the persons who should be employed to provide any of these various facilities? Or did that come later? A. You mean to build them, or—

Q. To build them. A. I discussed at some length, in fact, I discussed, I talked to contractors.

Now I don't think, as I recall, I don't think we talked to any contractors prior to July. I think we discussed after July, primarily, you know, with the various contractors themselves.

• • • • •

3106 Q. Had you met with other golf architects? A. I don't really remember. I know that Ault was the fellow who was eventually retained; and also he was favored to do the work. He had, you know, a very good reputation in the area. And I think he might have  
3107 been the only one we talked to; but I'm not certain. I know he was the primary one that we were interested in.

• • • • •

3114 Q. Can you fix the time in reference to when the advertising campaign began? A. Well, the first time we met with them would have been, I guess, in the fall or

late summer of '59. I just don't know the exact date. My memory isn't quite that good. That's quite a few years ago.

• • • • •

3117 Q. Did there come a time when you made arrangements with Mr. Post and Mr. Allen and Mr. Pickett to borrow money for the Glenhaven Club? A. Yes.

Q. Mr. Freeland, I show you Defendants' Exhibits 306, 307 and 309 (handing), and ask you if you would examine them and, after having examined them, tell me whether you know what they are. A. (Having examined) Should I answer?

The Court. Do you know what they are?

By Mr. Bergan:

Q. Yes; do you know what they are? A. Yes.

Q. What do you identify them to be? A. These were the legal instruments by which we entered into a loan agreement with them for funds to complete the golf course at Glenhaven.

Q. And does your signature and that of Mr. Hayes appear on each of those documents? A. Well, let's see, on two of them. I don't see it on this third one here.

3118 Q. Would you identify by number which two? A. It's on 306 and 307.

Q. All right.

On Defendants' Exhibit 306 I invite your attention to paragraph 4-B, the last sentence of that paragraph, which I will look over your shoulder and read:

"Any such note shall be signed by the duly authorized persons for the First Party, and shall be co-signed by James E. Hayes and C. Wayne Freeland, individually and as guarantors, but only to the extent of their Glenhaven interests." A. Right.

Q. Now my question to you, Mr. Freeland, is what was your interest in Glenhaven at that time, if you recall? A.

Well, we had the management company that operated Glenhaven.

Q. Now I show you Defendants' Exhibits 310, 311 and 312, and ask you if you would look at them (handing) and, after having done so, tell me whether you know what they are. A. Yes. These are promissory notes for monies advanced to Glenhaven for the golf course construction.

Q. And although those particular notes do not bear signatures, did you and Mr. Hayes sign such notes to the extent of your interest in Glenhaven, in accordance with 3119 that contract we just read? A. Yes.

• • • • •  
3123 By Mr. Bergan:

Q. Now, Mr. Freeland, I am going to hand you a series of checks which bear the following Government Exhibit numbers: 2-31, 2-68, 2-134, 2-135, 2-216, 2-247, 2-276, 2-303, 2-355, 2-384, 2-433, 2-518, 2-560, 2-93 and 8-38, and ask you if you would look at them individually and tell me if you know what they are. A. Yes. These are checks that we had received for our contract.

Q. When you say for your contract, you mean for the contract with the promoters for Lakewood Club? A. Yes, that's right.

Q. And would you look at those checks and tell me if they are all made out to Freeland-Hayes? A. Yes; all of them are.

Q. All of them are? A. Right.

Mr. Bergan. I have no further questions of Mr. Freeland.

• • • • •  
3134 Q. Now, you are also familiar, Mr. Freeland, with the amount of money collected in initiation fees? — A. Yes.

Q. —in the Lakewood Country Club, aren't you? A. Yes; that is correct.

Q. Mr. Freeland, isn't it a fact that the physical facilities, which I described to you a moment ago, could have been

built easily for the amount of money collected in the first few months of the membership campaign at Lakewood?

A. Yes.

Q. It could have been? A. Yes.

• • • • •  
3136 Q. Did you also advise them, Mr. Freeland, that by selling more life memberships than they originally planned, that they were doing something that they said they wouldn't do? A. There again, you know, I don't remember my specific, you know, conversation. The point was brought up that they had enough lives. But, you know, I guess it would have covered any eventuality. But I don't remember, you know, the detailed words or anything like that.

• • • • •  
Q. And what did he say when you told him you thought they had better stop? A. Well, if I may, he asked me, you know, if I felt that they had enough lives. And I said yes, I felt that they did have enough.

Q. And then did he say anything, after hearing your answer? A. I don't, you know, recall. I'm sure he did; but I don't recall specifically what he may or may not have said.

Q. Did you every try to tell Mr. Allen about it?  
3137 A. I don't recall that I did, or didn't. I just don't know.

Q. Did you ever try to advise Mr. Post of it? A. I can only give the same answer. I remember, as I said, I think, specifically discussing it with Mr. Pickett. I think he is the one I discussed it with. I don't recall specifically discussing it with either of the other fellows.

• • • • •

3196

**Mr. Robert W. Brownell**

was called as a witness by and on behalf of the defendants and, having been first duly sworn, was examined and testified as follows:

•   •   •   •   •   •   •   •   •

3198

By Mr. Bergan:

Q. Did you consider that there was a need for a golf club in the Rockville area or the metropolitan Washington area at that time? A. Yes, I did.

Q. Did you then agree to become a member of the Board of Advisors? A. I didn't at that particular time but I did later; yes.

Q. After you agreed to become a member of the Board of Advisors, Mr. Brownell, did there come a time when you had a meeting with the Board? A. Yes.

Q. Do you recall the approximate time of the first such meeting? A. No, I don't.

Q. Do you recall where it was? A. It is so long ago—It was at one of the downtown hotels, if I recall, where there was an actual meeting of the Board of Advisors. I can't recall where it was.

Q. Did there come a time when you were advised that contracts for the architecture of the golf course were to be let or had been let? A. I think so. Yes, I do.

Q. Do you recall the name of the golf course architect? A. Eddie Ault.

Q. Were you at that time familiar with Mr. Ault? A. Yes.

Q. Were you familiar with his reputation as a golf course architect? A. Yes.

Q. What was his reputation as a golf course architect? A. He was well-known in this area but not too well-known outside the area.

Q. Did there come a time when you reviewed with Mr. Ault the plans which he had drawn for the architecture of the layout of the golf course? A. Yes.

3200

Q. Do you recall when this may have been? A. Oh, there were several occasions. No, I can't.

Q. You say there were several occasions on which you reviewed the plans with Mr. Ault? A. Yes.

Q. Now, Mr. Brownell, did there come a time when you discussed with any of the promoters the problems of getting the golf course in operation at an early date? A. I don't understand your question.

Q. I will withdraw that and rephrase the question. Are you a member of a local country club? A. Yes.

Q. What is that club? A. Chevy Chase Club.

Q. Did there come a time when you recommended to the promoters that they retain someone from the Chevy Chase Club as an advisor? A. Oh, yes.

Q. And who was this person? A. Dick Watson, who is the golf course superintendent.

Q. Do you know whether they did subsequently retain Mr. Watson as an advisor? A. I don't really know. I can't recall that. I remember though on several occasions of Dick Watson going out there and going around the golf course with Eddie Ault.

Q. On any of these occasions did you bring Mr. Watson to the club for this purpose? A. I can't recall.

Q. Mr. Brownell, did your firm or your business association carry the insurance on the club? A. Yes, we did.

Q. Did you advise the promoters on the amounts and types of insurance which the club and the club complex should have? A. Yes, we did.

Q. Your business partner is Mr. Bogart? A. Yes.

Q. Do you know whether he was a member of the Board of Advisors? A. Yes, he was.

• • • • •  
3207 Q. And did you ever see Senator Butler at an advisory committee meeting? A. I can't recall. I don't think so but I can't recall.  
• • • • •

3210 Q. And do you recall that members then called you, as a prominent golfer in the area, to find out what the problem might be? A. I can't recall, but I would assume that they did; yes.

• • • • •

3213 Q. As a matter of fact, Mr. Brownell, didn't the promoters continue to tell you that there were 150 or 200 when you and Mr. Shannon raised the question? A. I really can't recall. I can't answer that; I just don't recall.

Q. Were you advised, Mr. Brownell, as an advisor to the club, as to how these promoters were going to make money out of the Lakewood Country Club? A. I am sure I was; yes. But I can't—There, again, it has been so long that I can't recall what the details were.

• • • • •

3214 Q. Well, from your conversations with them, as an advisor, did you have the impression that they had a long-term lease or a short-term lease in conjunction with this option to buy? A. I can't answer. I just can't recall. I know I was satisfied that things would be all right in that respect.

• • • • •

3216 Q. Mr. Brownell, prior to your discussions with the promoters when you were advised about the minimum spending requirement, had you been advised of it, or was that the first that you heard of it? A. Do you mean about the minimum monthly house charge?

Q. Yes. A. Oh, I had read that in the bylaws. That was one of the things that we requested before we got in argument, a copy of the constitution and bylaws.

Q. Then, was it disclosed to you that there would be a minimum spending requirement even before you be-  
3217 came an advisor to the club? A. I can't recall. I remember reading it in the bylaws but before that I can't recall whether they mentioned it to me or not.

Q. Well, did you read it in the bylaws, say, in the summer of '59 or closer to the winter of '60? A. I can't recall.

3223 Q. I would like to show you a document which is the last page of Government's 154, a balance sheet dated October 31, 1960. I ask you to look at that. In connection with your discussions at Ceres Restaurant, discussing the financial structure and situation of the club, Mr. Post showed you that that day, did he not? A. I simply cannot recall.

3225 Q. And on behalf of the directors, Mr. Hepburn or other directors demanded certain information from Mr. Post, did they not? A. Yes.

Q. For instance, they demanded information about  
3226 the various contracts which were outstanding involving Lakewood Country Club, did they not? A. I can't recall. I am sure they probably did but I can't recall specifically what the questions were that they asked.

Q. Do you recall their demanding additional financial information, that is additional to what they had received previously? A. I can't recall. I would imagine so; yes.

3285 **Marvin Simmons**

3286 a witness called by counsel for the defendant, having been duly sworn, was examined and testified as follows:

3287 Q. At that time did you meet with all of these three or with only some of them, if you recall?

3288 A. Well, I don't know, there were so many meetings. I imagine we all did meet together sometimes or other.



3313 Q. Did you inquire of Mr. Post—let me rephrase that. You did inquire of Mr. Post where he was going to get the money to put this operation over, did you not? A. Oh, I do not remember the details.

• • • • •

3349

**Clark T. Harmon.**

being first duly sworn, was examined and testified as follows:

**Direct Examination**

**By Mr. Bergan:**

Q. Would you state your full name, please, sir. A. Clark T. Harmon—H-a-r-m-o-n.

Q. And your current business address, Mr. Harmon? A. No. 35, Wisconsin Circle, Chevy Chase, Maryland.

Q. What is your occupation, sir? A. I am an architect.

Q. Do you specialize in any particular type of architecture? A. Yes. The primary business in my  
3350 firm is the design of country clubs, swimming clubs, and the facilities that go with both of them.

Q. Are you a member of the American Institute of Architects? A. I am.

Q. What is the name of your firm, Mr. Harmon? A. The firm name is Clark T. Harmon, A.I.A., and Associates, Architects and Engineers.

Q. Mr. Harmon, inviting your attention to August of 1959, did there come a time when you entered into a contract to do the architectural work for the clubhouse and the bath house at the Lakewood Country Club? A. Yes.

Q. Handing you, sir, Defendants' Exhibit No. 255, which is in evidence, I will ask you if you would look that over and tell me if that is the contract which you entered into for architectural services. A. Yes, sir, this is, a copy of it.

Q. Now, Mr. Harmon, with whom did you discuss your contract for architectural services? And let me limit that question: With whom, of Mr. Pickett, Mr. Allen and Mr. Post, if any, did you discuss and enter into this contract

for architectural services? A. Well, I discussed the  
3351 contract with four individuals—Mr. Allen, Post,  
Pickett, and Mr. Freeland.

Q. Did those discussions predate the date on which this contract is entered? A. Yes, not only before but after, I'm sure.

Q. Over what period of time, Mr. Harmon, prior to the date that contract was entered—and I believe it was August 21st, 1959—did discussions relating to the architecture at Lakewood take place, if you recall? A. Well generally speaking I would assume, as I look back, that the project was discussed for at least a month prior to this date.

Q. And in the course of the discussions taking place during this month, was there more than one discussion during that period of time with you? A. Oh yes, I'm sure.

Q. And during the course of these discussions did you meet, either individually or together, with all of the defendants—Mr. Pickett, Mr. Allen or Mr. Post—and with Mr. Freeland? A. Yes, sir.

Q. And did any of them tell you, Mr. Harmon, what kind of a clubhouse they wanted? A. Yes. The design and the requirements of the building were discussed by all  
3352 four people with me. The majority of the requirements, as I recall, were given to me by Mr. Freeland. And most of my discussions as to the size of the rooms and the capacity of the rooms, and so forth, were more with Mr. Freeland than with the other three individuals.

Q. At the times that you discussed this with Mr. Freeland, were one or more of the other three individuals present? A. Some of the times, yes.

Q. What did Mr. Freeland tell you, or what did either of these three tell you, with respect to the size of the clubhouse? Did they tell you how big a one they wanted? A. Well, it operated in this manner, that the size of the club was arrived at through putting all of these components together, that is, the size of the dining room, the locker rooms, the cocktail lounges, and so on and so forth.

At the time, we were designing a country club to house between 1500 and 2000 members. However, that had broken down, now, into roughly 500 golfing members and the rest in social members, which has a direct bearing on the size of the locker rooms.

Q. Did you draft plans or draw plans for the architecture of a clubhouse along this line? A. Yes, sir; we did.

Q. And did these plans have occasion to change 3353 during the following several months? A. Yes, sir.

After we started the drawing and the design of the plans, the plans were increased, sizewise, while we were in the drawing process—and the reason being that there were indications that we needed more facilities for the members joining the club.

Q. Are you able to state, Mr. Harmon, what the size increase was? A. The basic increase, as I recall, happened in the lower level of the building, which means that we added a basement area under the front section of the building. And this was added primarily to take care of teenage activities.

This was a considerable little addition. When you add a basement area, it means that you frame a floor above it. And there was a good deal of money involved in this addition. I can't really recall how much money was involved.

Q. Mr. Harmon, do you know or have you met a person named Robert Lewis, or James Cawley? A. Yes, I have.

Q. Did you have occasion to meet either or both of these persons during the course of drawing plans for the clubhouse? A. Yes, sir.

Q. What transpired at these meetings, sir? A. As I recall, their main interest happened to be in the kitchen design end of this project, and the layout of these 3354 facilities.

We were, as happens on many projects, the kitchen layout is done independently in my office. And then we coordinate the facility when it is put together.

Q. Did you mean both Mr. Cawley and Mr. Lewis? A. Yes.

Q. By whom were these persons introduced to you?

Mr. Loewy. If we could know when, first, Your Honor.

The Court. Yes, approximately when.

Mr. Bergan. Yes, Your Honor.

By Mr. Bergan:

Q. If you can, in reference to the contract which is in front of you, which bears the date of August 21st, if you can fix it in terms of weeks or months thereafter. A. Well, I would believe that it was weeks after the signing of the contract, certainly not prior to the contract. I can't recall who introduced me, as such.

Q. Can you recall whether it was one of Mr. Pickett or Mr. Allen or Mr. Post? A. I can't recall that.

Q. Did you confer with Mr. Lewis or Mr. Cawley with respect to the kitchen, — A. Yes, sir.

3355 Q. —or kitchen plans? A. That's correct. I did.

Q. And did you confer with them with respect to the integration of the kitchen plans in the entire clubhouse scheme? A. Yes, sir.

Q. Mr. Harmon, did you also design the bath house at the club? A. That's correct, yes.

Q. As a part of your original plans, were the clubhouse and the bath house one? Were they under the one roof? A. No.

Q. As a part of an architect's services, or as a part of your architectural services, did you perform certain supervision over the construction phase of the project? A. Yes, sir; we do.

Q. Generally, what kind of supervision does an architect perform over the construction phase of a project of this type? A. Well, generally we break supervision of the construction of the project into two phases. One deals with things called "shop drawings," which are usually full-scale drawings prepared by the suppliers, such as the steel, concrete, door, window people, which are sent to us.

And these drawings are made off of our drawings. And these are the ones that the items are actually fabricated from. We correct these and approve them, and send 3356 them back to the contractor—well, back through the contractor.

In a job of this size we probably had over a hundred different items, shop-drawing-wize.

And the second phase, since obviously we are on the job, normally at least once a week, possibly more, either myself or someone from my office, we are always available, supervision-wise, to the contractor. And when a job starts, usually we are on the site every day. And then it tapers off, after a few weeks.

This is basically how we—and also, I forgot to mention, that one of the items is that we do sign requisitions for the money given to the contractor on the job. We certify that this much work, and so forth, has been completed.

Q. And with respect to change orders submitted by a contractor, are they submitted through you for your approval? A. That's correct. And this is normal procedure. All change orders are normally made in triplicate, and they are sent to me for approval. We check them, sign them, and refer them back to the owner for either a credit or more payment, whichever the case may be.

Q. Mr. Harmon, this description that you have just given us of the general program that an architect follows with respect to building, in the construction phase of the job which he has planned, did you follow this 3357 type program with respect to the Lakewood construction? A. Yes, sir.

Q. Do you know the contractor for the clubhouse at Lakewood? A. Yes, sir.

Q. Did you know him before you had contact with him on this job? A. Yes, sir.

Q. For how long prior thereto had you known him, if you recall? A. I believe I had known him possibly a year prior to this job.

Q. Had you and he—or had you been the architect on any other jobs for which he was the contractor? A. Yes, sir; on a residence.

Q. At the time that—I am inviting your attention to 1960 now—at the time when the contractor, Mr. Hooper, entered into the contract——

I will withdraw that and rephrase the question.

In 1960 did you know the amount of the contract between the country club and Mr. Hooper for the construction of the clubhouse? A. Yes, sir.

Q. At that time did——

3358 The Court. Just a minute. I think you had better show him the contract. You asked him if he knew the amount of the contract between the country club and Mr. Hooper.

Mr. Bergan. Yes. The price of the contract is what I had reference to.

The Court. Come to the bench.

(At the bench:)

The Court. The contract was with the Country Club Developers, wasn't it, Mr. Bergan?

Mr. Bergan. You're right, of course.

(In open court:)

By Mr. Bergan:

Q. I will withdraw that last question and reask it this way, Mr. Harmon:

Inviting your attention to 1960, were you aware of the amount of the contract between Country Club Developers and Mr. Hooper for the construction of the clubhouse at Lakewood? A. Yes, sir; I was.

Q. Based upon your experience in the field, was this contract price reasonable for the architectural plans which you had submitted?

Mr. Loewy. Your Honor, I don't think we are clear on which contract price it is or which contract we are talking about.

3359 The Court. Well, he said he was acquainted with the contract between the Developers and Hooper—acquainted with the price.

Mr. Loewy. The “developers” meaning who, Your Honor?

The Court. The Developers—

Mr. Bergan. The Country Club Developers, is the question I asked.

The Court. —being the Country Club Developers Incorporated.

Mr. Loewy. Thank you.

The Court. And now the question is, was the price reasonable.

The Witness. Yes, I felt it was.

By Mr. Bergan:

Q. Now, Mr. Harmon, during the course of Mr. Hooper’s construction in 1961, did you perform your normal supervisory services as the architect on the job? A. Yes, sir.

Q. In your experience, or as a result of your experience, are you able to say whether Mr. Hooper’s work under the contract was adequate? A. It was indeed adequate, yes, sir.

Q. Referring again to the original plans which you drew for the Lakewood Country Club clubhouse, did those  
3360 original plans include a bath house, do you recall?

A. We designed a bath house. The original plans as such—are you referring to the plans for the clubhouse?

Q. Yes, sir. A. These are two distinct sets of plans.

Q. Yes, sir. A. We designed the clubhouse, and this was a distinct set of plans. And the bath house was a different set of plans. We did both, if that’s what you mean.

Q. Do you recall whether they were done at approximately the same time? A. Yes, sir; they were.

Q. Mr. Harmon, let me show you—hand you back again—Defendants’ Exhibit No. 255, and invite your attention to the first sentence of the second paragraph, and ask you if you can tell the size, square footage, of the plans as they



were originally drawn by you. A. I can't recall the original square footage. The project ended up with approximately 34,000 square feet.

After we signed the contract and we were in the design stage of the building, it is my recollection that we were always working in the vicinity of above 25,000 feet on the size of this building.

Now we had talked, previous to the signing of this 3361 contract, about the size of country clubs. And this is where this figure arose in this contract that states \$283,000.

Now, when this project ended, 34,000 square feet still came out to about \$13 a foot, which was the determining factor. But nowhere did we design a building that was supposed to cost \$283,000. We were always designing above that.

Q. Mr. Harmon, at the time these plans were drawn—and I am now talking about 1959—was this a large clubhouse, by metropolitan Washington area standards? A. Oh yes. We felt that it was above average, size-wise.

Q. And was this, even as originally drawn, that it would have been above average? A. I think so, in my opinion, predicated on the golfing members. There was only an 18-hole golf course here at the time.

The Court. Haven't you testified, Mr. Harmon, that you cannot recall the square footage as originally planned?

The Witness. No, sir, I can't exactly. I do believe, though, that we were designing above 25,000 feet. And the additional footage that we put in the building did not affect the perimeter. It was in the lower level areas.

So I would assume, as best I can remember, that we were designing near to 30,000 feet, when we made the change.

3362 By Mr. Bergan:

Q. Did you have anything to do, Mr. Harmon, with the design of the pools and the pool areas at the club? A. Yes, sir. We did not design the pools, as such;



but we designed the bath house and all of the pool area, and the cabanas that were attached, and all of the paving at various levels that took place in the pool area, which was a very elaborate layout.

Q. Did there come a time when the location of the bath house had to be revised because of sanitary standards and requirements of the Montgomery County board? A. I don't recall.

Q. Let me show you, sir, Defendants' Exhibits 293 and 294 (handing), and ask you if you would look them over and see if they help refresh your recollection. A. Yes, sir; I recall these letters.

Q. Does this help refresh your recollection with respect to location of the bath houses, or bath house? A. This is not quite in reference to that. The original layout of the pools that was presented to me by Mr. Anderson, of Crystal Pools, showed the pools in relation to a bath house. And I, in turn, checked this with the county officials. And it was our opinion also, and not just the county's opinion, that we needed more area around the pools for the 3363 influx of people. And this was the reference that I made about revising this layout. And it was so revised and enlarged considerably, to take this influx of people.

Q. Now, Mr. Harmon, do you recall whether there came a time when the construction at the clubhouse came to a halt? A. Yes, sir.

Q. Did you have occasion, at or about that time, to examine the work which had been done? A. Yes, I did.

Q. In your opinion had the work up to that point been done properly? A. Absolutely.

Q. Do you recall that there came a time, some time subsequent to that, when work on the clubhouse was to be recommenced? A. Yes, I do.

Q. Can you fix an approximate time for this? A. Well, I estimate that it was two and a half to three years, as I recall.

Q. At that time were you, as an architect, called upon to perform any architectural services? A. Are you referring to me being recommissioned to continue the job?

3364 Q. Yes, sir. A. Yes, sir; I was.

Q. By whom were you so employed, if you recall? A. I was employed by the new owners of the club.

Q. And what did your re-commission, as you phrased it, entail?

Mr. Loewy. I object. I think it's no longer relevant, since these defendants were no longer part of the club.

Mr. Bergan. May we come to the bench?

The Court. You may come to the bench.

(At the bench:)

Mr. Bergan. Mr. Simmons testified yesterday, and Mr. Brownell also testified during his time on the stand, that it took in the neighborhood of \$500,000 to finish the club when the members took over and started it. I propose to ask this witness why; and he will say that a large part of it was redesign, which substantially increased the cost.

The Court. What has that got to do with the case we are trying here?

Mr. Bergan. The evidence is in that it cost \$500,000 to finish the clubhouse. If you wish to add up the arithmetic, Hooper's contract was \$565,000, give or take a few dollars, and he had been paid some \$300,000. So he had coming under his contract, \$265,000. Now when the club  
3365 members paid \$500,000 to finish the clubhouse some two or three years later, at least one of the major reasons for that difference was that they substantially redesigned the clubhouse when they took it back over again. I don't to leave the impression that we had left so much work undone that it took twice what the contract called for to finish that work.

The Court. I think the question actually went to what he was getting out of it.

Mr. Bergan. I didn't intend it to—but to what work he was required to do.

The Court. I think what you want to know is whether the plans in 1963 were changed in any way.

Mr. Bergan. I will ask it that way.

Mr. Loewy. Your Honor, both the \$500,000 contract price and the \$600,000 loan came out from Mr. Simmons in Mr. Bergan's own examination, over my objection. I think the same is true of Mr. Brownell. Mr. Bergen has brought out this \$500,000 cost himself, several times. And I have tried to stay away from any reconstruction or anything that happened after the membership took over the reconstruction.

I don't think it is fair for Mr. Bergan to be able to correct his own mistakes by going into things which are otherwise not relevant to the case.

The Court. I am going to permit Mr. Bergan to ask 3366 one question, and that is whether or not in 1963, or whenever it was, two and a half or three years later, whether the clubhouse was completed on the basis of the original plans, or whether new plans were drawn, and was there a change. And beyond that you can't go.

Mr. Bergan. And I would like to ask the next question, which is, if there was a change, did this change substantially increase the cost of construction.

The Court. All right—and leave it there.

Mr. Bergan. And stop right at that point.

The Court. And your objection is in the record.

(In open court:)

By Mr. Bergan:

Q. Mr. Harmon, some two and a half years later, as you indicated, when the construction of the clubhouse was picked up again by the membership group, were you called upon to redesign some or all of the clubhouse plans? A. Yes, we were.

Q. Did the redesign work which you did substantially increase the cost of completing the construction? A. Yes, it did.

Q. At this time did you have occasion to examine the condition of the clubhouse as it had been constructed before Mr. Hooper stopped construction?

3367 Mr. Loewy. Your Honor, I object, because at this time he is again——

The Court. I am going to sustain that, Mr. Bergan.

Mr. Bergan. May I come to the bench again? I hate to ask it.

The Court. Come to the bench.

(At the bench:)

Mr. Bergan. Mr. Loewy tried to elicit evidence yesterday, through Mr. Houyoux, as to the condition of the clubhouse two years later.

The Court. Two years later? Houyoux was the pilot, wasn't he?

Mr. Bergan. That's right. He was talking about 1961. I already have it inspected in 1961.

The Court. And up to that time the work had been done properly.

Mr. Bergan. Well, I'll leave it there.

(In open court:)

By Mr. Bergan:

Q. Mr. Harmon, were you aware or are you aware of the conditions at the Lakewood Country Club construction site as of March of 1961? A. Yes, sir.

3368 Q. Are you able to describe the condition of the clubhouse facilities at that point? And I am not talking in terms of completion or lack of completion; but in what condition was the part of the building that was there? A. Now let me—are you referring to when the job stopped, when the construction stopped, in 1961—what was the date?

Q. This would be a month or two after, some months after the construction stopped. A. I see.

Mr. Loewy. Your Honor, I think he should testify to the condition when he inspected it during that period.

The Court. Mr. Harmon, after the construction stopped, you were acquainted with the work which had been done up to that time.

The Witness. Yes, Your Honor.

The Court. Did you have any occasion to go out to the country club site following the stopping of construction, and before you were recommissioned?

The Witness. Yes, Your Honor; I was there many times beyond that.

The Court. Were you there around the month of March of 1961?

The Witness. I am sure I was. I was there many, many times.

3369 The Court. And do you have any recollection of the month of March, 1961?

The Witness. Not specifically.

The Court. Are you familiar, sir, with the time when the litigation started in this courthouse?

The Witness. Yes, sir.

The Court. Do you remember approximately at that time, not necessarily the date, but approximately in that period?

The Witness. Yes, sir; I do.

The Court. Do you have any recollection of having seen the clubhouse and the facilities around there as of that time?

The Witness. Yes, I did.

The Court. You may ask the question.

Mr. Bergan. Thank you.

By Mr. Bergan:

Q. Can you describe generally the condition of the facilities at that time? A. At that time the facilities weren't a great deal different from the week in which construction stopped. Our major concern, of course, was that the building did not have a roof on it, in part. But the concrete work was in fine condition. The steel work, et cetera,  
3370 was in fine condition. The only item that bothered us at the time the project stopped was the fact that

two walls had not been supported completely; and we felt that they would fall down, which they subsequently did.

Mr. Bergan. I have nothing further, Your Honor.

The Court. Mr. Dyson?

Mr. Dyson. I have no questions.

The Court. You may cross-examine.

3398

Edmund B. Ault,

being first duly sworn, was examined and testified as follows:

3399 Q. Does the golf course architect work with the golf course contractor in the construction phase, following the design? A. Well, he must, to see that it conforms with the intent of the design and does conform to the specifications.

Q. Did there come a time, Mr. Ault, when you were asked to design the golf course at the Lakewood Country Club? A. I was.

Q. Do you recall, sir, by whom you were first contacted with respect to that retainer? A. I don't remember the exact man. I remember I was called and met at an office in Bethesda. And I know that Mr. Allen and Mr. Pickett were there. And we discussed in detail some of the golf course work.

Q. Do you recall whether you were told at that time the amount of land that was available for the construction of the golf course? A. I don't remember whether I was told the exact amount of land. But I voiced an opinion, as I always do, as to the number of acres that's required for a good golf course.

3400 Q. What, in your opinion, are the number of acres required for a good golf course? A. A hundred and fifty, plus.

Q. This is for 18 holes, sir? A. Eighteen holes, depending on the usability of the terrain. If it's all usable,

150 is sufficient. If it's rugged and has valleys and erosion, why you could go to 160 or 170 acres.

Q. Can you put a golf course on less than 150 acres?

A. Well, there have been many golf courses built on less than 150, and quite a few of them now even exist in this area. However, they become tight, and not too enjoyable, because the players are in each others' fairways and it doesn't make a good golf course.

The Court. We are talking about an 18-hole course?

The Witness. Yes, Your Honor. You can put an 18-hole course on lesser land.

By Mr. Bergan:

Q. Mr. Ault, were you retained to design the golf course at Lakewood? A. I was.

Q. In designing the golf course at Lakewood, did you have occasion to visit the site to determine the geography or the physical features of the site?

3401 A. I made sure that I did visit the site, and walked over it, and convinced myself that a good golf course could be built on it.

Q. And did you reach that determination, sir? A. I did.

Q. And did you then lay out the 18-holes for the golf course? A. After a topographical, aerial survey was made, and a contour map prepared, I then laid out the golf course.

Q. Of what use in your profession is a topographical, aerial survey? A. Well, in routing the golf course, to avoid blind shots in the playability of the course, and to distinguish your drainage areas and the different elevations that must be reckoned with in the mechanical engineering for the irrigation system.

Q. And then you indicated, in addition to the topographical, the aerial photograph. Do you have an elevation chart?

A. That's the topographical map. That gives you the elevations.

Q. And who prepares that, sir? Do you, or—— A. No. There are several engineering firms within the area.

As I remember, I think Air Photographs, Incorporated prepared this particular one, if my memory serves me. But I do not prepare this type of photogrammetric engineering.

Q. But you utilized both the aerial photograph and the elevation? A. Well, as I said, you must have one.

Q. At the time you were retained by Mr. Pickett or Mr. Allen or Mr. Post to design the golf course at the Lakewood Country Club, were you told anything about the type of course that they wanted designed? A. No, I don't remember being instructed to build any particular type.

Q. Did you discuss with them, after you had viewed the scene, the type of course which could be constructed?

A. Well, I remember the discussion that it was to be a championship course; that you could be able to hold any type of regulation tournament on it; that it would qualify as a championship golf course.

Q. Did the golf course which you ultimately laid out meet those qualifications, Mr. Ault? A. I think it did, because the United States Golf Association will recognize a golf course which measures in excess of 6600 yards as a true test of golf, to hold a title tournament on.

Q. And, to your recollection, is the Lakewood course, as you designed it, in excess of 6600 yards?

A. I am quite sure it exceeded that, as I remember.

Q. Do you know a Robert Elder—or perhaps I should ask—did you in 1959 or '60 know a Robert Elder? A. Yes, I did.

Q. Who was Robert Elder? A. He worked for a—Bob Elder—worked for Thomas E. Carroll, a landscape contractor who does construction work and builds golf courses.

Q. Have you had occasion to work with Mr. Elder? A. On many occasions.

Q. And on an occasion prior to the Lakewood job, had you worked with Mr. Elder? A. That's right.

Q. Did you discuss with either Mr. Pickett or Mr. Allen or Mr. Post the utilization or retainer of Mr. Elder, or



Thomas Carroll and Sons, to construct a golf course which you had designed at Lakewood? A. I did. I thought he was a well qualified builder and could do them a good job.

Q. Was there any discussion with either Mr. Pickett or Mr. Allen or Mr. Post about the speed with which they desired to have the golf course built, if you recall?

A. Yes. Time was of the essence. They emphasized 3404 that very strongly, and that they would like to get it built just as rapidly as they could.

Q. To your knowledge were any unusual steps taken in that direction? A. Well, as a rule, the most lengthy development of a golf course is the putting greens. And in order to expedite this I think Elder suggested that they prepare a nursery on the site; and, after the rest of the golf course was completed, that they would take sufficient turf from the nursery to plant the greens with, which would save considerable time.

Q. And are you aware, Mr. Ault, that a contract was in fact subsequently entered between Country Club Developers and Thomas Carroll and Sons for the construction of the golf course facility? A. Yes.

Q. And during the construction phase did you work with Thomas Carroll and Sons to determine that the construction of the golf course followed the layout which you had designed? A. I did.

Q. What type of supervision does this entail on your part, Mr. Ault? A. Periodic visits to the site to see that the greens were of the proper size as called for in the plans; that the soil modification for the mixing of 3405 the greens was mixed properly; that the irrigation was installed in accordance with the plans; and the contouring and shading and—

Q. In addition to the length of a golf course, does the United States Golf Association have requirements with respect to the size of the greens or the size of tees, or things of that type? A. No. The United States Golf Association does not enter into the sizes as much as they do into

the length and character. The architect is the one who designs the green size to fit the particular location where it is to be built. And also, the length of the hole, as a rule, will dictate the size of the green.

Q. Getting back to the supervision of the construction by Mr. Carroll, did you in fact make these periodic visits to the Lakewood site to determine whether the construction was following your plan? A. I did.

Q. And did you satisfy yourself that the construction was proceeding in accordance with the plan which you had designed? A. Yes, I did.

Q. Do you recall whether there came a time when the golf course was completed? A. Yes, I remember it was completed.

3406 Q. And are you able to state whether, as a result of your supervision, that the golf course was in fact completed in accordance with the plans which you had designed? A. That's right.

Q. Mr. Ault, at the time of the completion of the golf course—and can you fix an approximate time for that? A. No, I can't remember the exact date.

Q. Do you recall a time when the golf course was formally opened for play? A. I remember the exhibition tournament that was played there between I think it was the golf professionals Snead and Palmer. I remember that day. I was present that day.

Q. And were 18 holes of golf available for play that day? A. They were available. But I think it rained so severely they quit on about the 15th or 16th.

Q. Using that date, then, or that approximate time, are you able to say in what condition the golf course was at that time? A. It was in a good, playable condition. It wasn't in the best condition that it would be in several months from then, when the season permitted; but it was in a good condition.

Q. Is a period of time required in order to permit the fairway grass to develop adequately for golf course play?

A. Well, in this area, the middle Atlantic area, as a  
3407 rule, if construction is started on a golf course in  
April or May, and the fairways and greens prepared  
properly, and if they are planted in, say, the 1st of September, using either stolens or seed, then by the following  
June 1, as a rule, the golf course is in pretty good shape  
and can be opened for play. And this is being done repeatedly in this middle Atlantic area.

Q. Now, Mr. Ault, I show you what has been marked as  
Defendants' Exhibit No. 249—and it's in evidence—and I  
ask you if you would glance at that, please, sir.

You recognize that, sir? A. I do.

Q. And is that the contract, your contract, for the design  
of the golf course? A. That's right.

Q. I notice on the very bottom of the second page there  
is apparently an addition to the contract which states,  
"Also will stake out golf course." A. That's right.

Q. And it bears the initials TVP and EBA. EBA are  
your initials? A. That's right.

Q. What is the significance of staking out a golf course?

What does that mean? A. That means that you put  
3408 a stake in the center of the proposed tee; and then  
in the center of the dog leg or landing area or impact area, which as a rule is 225 yards from the tee stake;  
and then a stake in the center of the green. This would be  
relative to par four holes.

On a par three hole you would put a stake in the center  
of the proposed tee, and a stake in the center of the green.

On the par five holes, you need four stakes—the tee, the  
two landing areas and the green.

Q. Is this something that is done before construction is  
started? A. It must be, yes, sir.

Q. And what is the purpose for it, Mr. Ault? A. To make  
sure that the golf course is laid out accurately, and the  
field and greens and tees will be built where they are proposed to be built and as shown on the plans.

Q. Do you recall whether there was an irrigation problem at the proposed Lakewood site? A. Irrigation relative to the watering of the tees and——

Q. I said "irrigation," and that's probably a misleading word. A water supply problem perhaps is the—— A. On all golf courses you need a source of water supply. And at the time that did not exist, any sufficient impoundment or storage lake. So I think we built a large one to  
3409 store sufficient water to irrigate the golf course.

Q. Now, Mr. Ault, I don't know whether from where you are seated you can see this. Do you see the part that I am designating? A. I see it.

Q. If not, you can come down. A. I recognize it.

The Court. What is this?

Mr. Bergan. This is Defendants' 331, Your Honor.

By Mr. Bergan:

Q. And this large area there, do you know what that is? A. That's a lake.

Q. Is that the one you designed or added to the topographical features for the purposes of a watering system? A. That's the one.

Q. Let me ask you, while I have this chart pulled out, Defendants' 331, does this layout accurately reflect the golf course which you designed for Lakewood? A. I didn't hear your question.

Q. I say, does this photograph accurately represent the golf course which you designed for Lakewood, and which was constructed under your supervision?

The Witness. I will have to walk over and look at it, Your Honor.

3410 The Court. Step down there, yes. Take the microphone.

The Witness (at the chart). The routing is exactly the way I laid it out. There may be some small modifications in some of the trappings; but it is a reasonably good facsimile of the original layout.

By Mr. Bergan:

Q. And just for purposes of identification, where does this course start? Where would the No. 1 hole on this course be, Mr. Ault? A. Your No. 1 tee is in the area here. This is No. 1 green.

Q. And does it generally follow along this perimeter? A. Yes, that's right. This is tee No. 2; that's a long par three. Your No. 4.

Sometimes after a course is built, the members——

The Court. Just a minute. I think if you would have the witness step to one side, the jury would be able to see it better.

By Mr. Bergan:

Q. If you would step right there, is all right, I think. A. Thank you.

This picture reasonably represents the golf course as I designed it and laid it out. However, I can recognize 3411 little things that members, after a course is built, they will add certain features of planting, or change the design of traps, and so forth. And sometimes when you lay a course out and design the No. 1 to start, the members reverse the lines and use No. 10 for No. 1, and No. 1 for—but this is not too unusual. But this is a good picture of the layout.

Q. Generally on this Defendants' 331, Mr. Ault, you indicated you started here and generally go out around this perimeter. Do you come back to the clubhouse at the end of the 9th hole? A. Oh yes. The initial 9th, at the time I had routed it, the 9th was a par three across the lake to a green, with the clubhouse here. This was the ninth.

Q. And that is across this artificial lake? A. That's right.

Q. And you start out again on the 10th hole and go out around this perimeter? A. I think we walked, as I had it, there is a path around here to the lake. You walked to the 10th tee on the levee or dam of the lake, and played down. This at that time was the 10th green.

Q. And then of course you work out and come back on the 18th hole? A. That's right.

Q. Now, Mr. Ault, thank you; you can resume the stand, sir.

3412 Mr. Ault, did there come a time when you recommended that certain additional land be purchased for the golf course? A. We discussed certain characteristics of the boundaries of the land, and I told them that additional land would make a better layout, yes.

Q. And do you know whether that additional land was in fact purchased? A. No, sir; I don't know whether—

Q. Or "acquired." I won't use the word "purchased." I will say "acquired." A. I do know that some of it was used. I don't know whether they purchased it or leased it or what they did.

Q. Are you able to state whether some of the golf course which you designed and laid out was in fact constructed on land which they did not have in their possession at the time you were first retained? A. At this time I couldn't say, no. I don't remember that, whether they owned it or whether they didn't. I was just given the boundary of the usable land.

Q. Do you have an estimate, Mr. Ault, or are you able to state at this time the amount of the acreage used for the golf course? A. That's in the golf course use now?

3413 Q. Yes, in the golf course area. A. I would approximate between 150 and 160, in the 18-hole golf course. But I do not have an accurate—you could put a perimeter around it and determine the exact acreage, if you so desired.

Q. Mr. Ault, I show you what have been marked previously as Defendants' Exhibits 251, 252, 253 and 256. And without telling me what they are, I will ask you if you recognize them. A. Yes, I recognize them.

Q. And what do you recognize them to be, without going into any detail or reading from them? A. Bills which I submitted for my services.

Q. In each instance? I mean, each of those four is a bill which you submitted for your services? A. That's right.

Mr. Bergan. I offer them, Your Honor—251, 252, 253 and 256 (handing to Mr. Loewy).

Mr. Loewy. No objection, Your Honor.

The Court. Very well. Defendants' 251, 252, 253 and 256 are in evidence.

(The Ault bills, heretofore marked for identification as Defendants' Exhibits 251, 252, 253 and 256, were received in evidence.)

By Mr. Bergan:

Q. Mr. Ault, you used the expression "length" and 3414 "character" in describing the criteria which the U. S. Golf Association has. What exactly—we know what "length" means—but what, exactly, does the expression "character" mean in that context? A. Well, you can design features into a golf course, such as the trapping, the bunkering, the shape and sizes of the greens that separate just a routine golf course from a piece of flat terrain to one that may be more interesting and challenging.

Q. Will you describe the character of this golf course that you designed, in terms of the U. S. G. A. specifications? A. Well, the golf course has sufficient character to be a good golf course. However, let's say there are golf courses that have a lot more character. There are good golf courses that have a lot less. But this is an average, good golf course.

Q. Did you have occasion, Mr. Ault, following the opening of this golf course, to visit the site of the course on more than one occasion? A. Oh yes. I have visited it on several occasions.

Q. And do you have any recollection of having visited the site of this course in March of 1961? A. I don't remember that exact date, no.

Mr. Bergan. May I try to lead a little bit into 3415 this time period?

The Court. We will see.

By Mr. Bergan:

Q. Do you recall a time, Mr. Ault, when litigation began with respect to the Lakewood Country Club? A. Only to the extent that I read it in the newspaper.

Q. If you can fix that particular period of time, did you have occasion to visit or see the Lakewood golf course at or about the time the litigation began? A. I can't say that I did, no, sir.

Mr. Bergan. I don't have any further questions, Your Honor.

The Court. Mr. Dyson.

Mr. Dyson. No questions, Your Honor.

The Court. Mr. Loewy.

• • • • •  
3416

Garland Gerald Nixon.

being first duly sworn, was examined and testified as follows:

• • • • •  
3436 Q. Now, at or about this time, did you have any discussions with Mr. Post, Mr. Allen or Mr. Pickett with respect to financing? A. Do you mean the golf clubhouse?

Q. Yes, the latter part of 1960. A. We had some discussions; yes.

Q. What were those discussions, if you recall? A. Well, they felt like they might need some help and they approached us on it; and I just approached it from a business point of view of how we could do it to our advantage.

Q. Now, when you say they approached us on it, who did they approach, you? A. They approached me inquiring if Sam Snead and I would be interested.

Q. What did you tell them, sir? A. Well, I felt if there was a way that we could operate it to where we would make some return on our investment then we were very definitely interested.



Q. Did there come a time, Mr. Nixon, during the course of these discussions when you entered into some agreement along this line with Mr. Post, Mr. Allen and Mr. Pickett?  
A. Before I went to Florida?

Q. No, sir. Following your entry into these discussions. A. Yes, there was.

Mr. Bergan: Would you mark this, please?

The Deputy Clerk: Defendants' Exhibit 338 is marked for identification.

(Defendants' Exhibit 338 [Purchase Agreement] was marked for identification.)

The Court: I have seen it.

The Deputy Clerk: Defendants' Exhibits 339, 340 and 341 are marked for identification.

(Defendants' Exhibits Nos. 339, 340 and 341 were marked for identification.)

The Court: I have seen them.

By Mr. Bergan:

Q. Mr. Nixon, I hand you what has been marked as defendants' exhibit number 338 for identification and, without telling us what it is, I ask you whether you can recognize it, sir? A. I do.

Q. Does your signature appear on the second page? A. Yes.

Q. And does the signature of Mr. Post, Mr. Allen and Mr. Pickett appear on the second page? A. Yes.

Q. And what is the date on the agreement, sir?  
3438 A. The 23rd day of March, 1961.

Mr. Bergan: Your Honor, I offer this document, defendants' 338.

The Court: Mr. Loewy, the same views that you expressed at the bench?

Mr. Loewy: As to this document; yes, Your Honor.

The Court: As to this document?

Mr. Loewy: Yes, sir.

The Court: All right. Overruled. It is received in evidence.

(Defendants' Exhibit No. 338 was received in evidence.)

Mr. Bergan: May I read it, Your Honor?

The Court: You may.

Mr. Bergan: This is captioned "Purchase Agreement".

[The reading of the Purchase Agreement, dated 23rd day of March, 1961, by Mr. Bergan to the jury commences on the following page.]

3439 [Reading by Mr. Bergan]

*"Purchase Agreement*

"Agreement made this 23rd day of March, 1961, in the City of Washington, District of Columbia, by and between Snead-Nixon Company, a Delaware corporation, with its principal place of business in White Sulphur Springs, West Virginia, (hereinafter called 'Snead-Nixon') and Bill M. Allen, Leroy W. Pickett and Troy V. Post, Jr., all of Arlington, Virginia, (hereinafter called collectively 'Allen').

"Whereas, Allen through various corporations is presently in control of and seized of certain real and personal property in Rockville, Maryland, pertaining to and known as Lakewood Country Club; and

"Whereas, Snead-Nixon is desirous of acquiring all of such properties as are hereinafter set forth upon the terms and conditions set forth in this agreement; and

"Whereas, Allen is willing to transfer such properties in accordance with this agreement.

"Now Therefore, in consideration of the mutual promises and covenants contained herein and in consideration

of the foregoing and other good valuable consideration receipt of which is hereby acknowledged, the parties hereto agree as follows:

"1. Allen shall take all necessary steps to cause to be transferred to Snead-Nixon the following items and 3440 general categories of property:

"A. The Operator's Agreement dated July 11, 1959, by and between Lakewood Country Club, Inc., and Lakewood Management Corporation.

"B. The lease dated September 1, 1959, by and between PAP, Inc., and Glen Hills Club Estates, Inc.

"C. The lease dated September 1, 1959, by and between PAP, Inc., and Lakewood Country Club, Inc.

"D. The lease dated May 2, 1960, by and between Country Club Developers, Inc., and Guy L. and Mary Carter.

"E. That certain 13+ acres of land owned by PAP, Inc., and formerly owned by Clifton C. Viers, located in Rockville, Maryland.

"F. All rights, title and interest in and to all items of personal property of Allen located on the Lakewood Country Club site in Rockville, Maryland, such transfer to be subject to any indebtedness due thereon, such personal property to include contracts for construction.

"G. Such other personal property as may be determined by the parties hereto to be the property of Lakewood Country Club, such determination to be made by a detailed inventory as soon as possible.

"2. Snead-Nixon in consideration of the foregoing 3441 transfers does hereby agree to proceed with the completion of the facilities as planned at Lakewood Country Club, including the securing or providing of necessary financing to accomplish such completion, it being understood that time is of the essence in this agreement.

"In Witness Whereof, the parties have caused their names and seals to be affixed to this agreement below, all in the place and on the date first above written.

"SNEAD-NIXON COMPANY

(SNEAD-NIXON)

by /s/ GARY NIXON

/s/ BILL M. ALLEN

/t/

/s/ LEROY W. PICKETT

/t/

/s/ TROY V. POST, JR.

/t/

"WITNESS as to all:

"s/ CLAUDE B. REED, JR."

t/

3442 By Mr. Bergan:

Q. Now, Mr. Nixon, paragraph 2 of this agreement which I have just read provides, among other things, that Snead-Nixon agrees to proceed with the completion of the facilities as planned at Lakewood Country Club, including the securing or providing of necessary financing to accomplish such completion. Had you had discussions with anyone prior to March 23rd of 1961 with respect to such financing? A. Yes, I had.

Q. Would you state when and with whom? A. As I recall, it was in the fall before I went to Florida with Mr. Barnum Colton, who is the head of the Washington National Bank. And I presented the idea to Mr. Colton that if a satisfactory arrangement could be reached with the Post-Allen-Pickett Group where we could assume their position we were interested, and Mr. Colton felt that he could help us in the financing of it. We had known Mr. Colton for a long time. He was a Director of the C & O Railroad, which

Sam and I worked for and we had known him for a long time.

Q. Now, Mr. Nixon, during the period of the fall of 1960 and the early spring of 1961—early winter of 1961—did you become aware of the fact that there was a certain amount of membership unrest at the Lakewood Club? A.

Very much so.

3443 Q. In your discussions with Mr. Pickett and Mr. Allen and Mr. Post, did this become a factor? A. It did.

Q. And in your discussions with Pickett, Allen and Post, what factors did this consideration play? Or, I should say, what consideration did this factor play? A. I told them we would not be interested in proceeding under any plan unless all parties would be compatible to the plan. In other words, the membership at large would be agreeable as well as Post-Pickett-Allen. I didn't want any dissension or bad publicity for Mr. Snead and myself; and if they could work out a satisfactory agreement with the membership at large this would be a good plan and we were prepared to go ahead with it.

Q. Did there come a time when you met with—and I am still talking about prior to March 23rd, 1961—any of these membership groups? A. Yes.

Q. Are you able to state the occasions on which you met with them and with whom you met? A. Well, I came up from Florida, I think, on more than one occasion, and the various committees that I met with, if I recall correctly, consisted of either Mr. Hepburn, Mr. Estok or Mr. Murdock in each one of the committees, all three of them or at least one of them.

3444 Q. And did you meet with them on more than one occasion? A. Yes, I did.

Q. Did you discuss with them the proposal for the Snead-Nixon Group? A. I did.

Q. To take over the promoters' position, so to speak? A. Yes.

Q. Now, this agreement which I just showed you, identified as defendants' exhibit number 338, was this agreement signed by you with the understanding that it would not become effective unless it had the approval of the membership? A. That is correct.

Q. Were you aware that on or about the 15th of March a group of members filed a lawsuit against Messrs. Post, Allen and Pickett and, perhaps, certain other named defendants? A. Yes.

Q. Was this agreement which I just read signed by you with the understanding, again, that it would not become effective until the lawsuit had been resolved? A. All complaints had to be satisfied. In other words, it had to be a compatible arrangement. We weren't interested unless everyone was happy with the idea. We didn't want to inherit anyone's fight.

Q. At the time that you signed this agreement, 3445 was it your understanding or was it your intention that the agreement would be subject to the approval of the membership as a whole or groups of the members?

Mr. Loewy: Your Honor, I object. I think the last six or seven questions have been leading. Mr. Nixon is only answering yes or no after Mr. Bergan testifies.

The Court: All right. I sustain it.

By Mr. Bergan:

Q. Did you meet with any of these groups of the members with respect to this particular agreement? A. Yes, I did.

Q. Are you able to state on how many occasions? A. Well, I would say, as I recall, approximately three times.

Q. And what understanding did you have as a result of those meetings, if you had any, at the time this agreement was signed? A. Do you mean what agreement did I reach with the membership representation?

Q. What was your intention when you signed this agreement? A. Well, if the membership felt that our assuming the Post-Allen-Pickett position to complete the project was

what the members wanted, we wanted to go on  
3446 through with it. If they protested this action, we didn't want it.

Q. Did this agreement, defendants' 338—the one I just showed you—ever come to fruition? A. It did not.

Q. Did you have further discussions following March 23rd of 1961 with Mr. Pickett, Mr. Allen or Mr. Post with respect to the financing? A. I don't understand the question.

Q. Well, this agreement, you just testified, did not come to fruition— A. Right.

Q. Following that time, did you continue to have discussions with them with respect to financing? A. Only in the same light of this agreement here. I mean we didn't offer any additional plan.

Q. Did there come a time when you asked your certified public accountant to come to this area? A. I did.

Q. Can you state approximately when? A. It was in the spring of 1961, and I don't know the exact time but it would be sometime like March or April.

Q. And for what purpose did you ask him to come? A. Well, I wanted to explain to him the mechanics of the whole thing and let him give me an assessment if he  
3447 thought it was a reasonable investment for the Snead-Nixon Company to undertake. In other words, we didn't want to go into it unless it was going to be worth our while.

Q. What is this gentleman's name? A. Gordon Ford of the firm of Yeager, Ford and Warren, Louisville, Kentucky.

Q. Mr. Nixon, I hand you now defendants' exhibit number 339 for identification and, without asking you what it is, I ask you whether you recognize it? A. I do.

Q. Now, without describing it to me, what do you recognize that to be? A. This was from Mr. —

Q. Wait. Is it a letter? A. It's a letter; yes.

Q. Does the last page bear your signature? A. This copy doesn't have my signature. It has it typed in.

Q. Are you able to recognize that as a copy of a letter you did sign? A. I am sure it is; yes.

Q. And the date? A. April 7, 1961.

Mr. Bergan: I offer defendants' 339, Your Honor.

3448 Mr. Loewy: I object. May we approach the bench.

The Court: Come to the bench.

(At the bench:)

The Court: Let me read it.

[The Court read to himself defendants' exhibit 339 for identification.]

Mr. Bergan: He testified that the first agreement never came to fruition, that a portion of it, I understand, was that there had to be a stop knocking each other, in effect, between the members and the promoters, and in that event w will come in and save this thing for you. He tells them this after the first agreement doesn't come into fruition. And there is still a subsequent agreement in May, the next month, in which they are still attempting to get membership approval and the Court's approval at this time for a proposal from the Snead-Nixon Group which has been brought about by the promoters. I think it is part of that whole story, Your Honor.

Mr. Loewy: Your Honor, this is one of the documents we had up here before the recess and at that time I thought it was an agreement. I don't think it is anything but a prior statement of Mr. Nixon's feelings about the good will of mankind and his interest in refinancing if it can be worked out. He has testified to that and I don't see the relevancy of the letter.

The Court: I think it is worse than that. I think  
3449 the letter contains a conclusion with respect to what he thinks about the Board of Directors. He tells about how the Board of Directors asked the Snead-Nixon Group to write a letter in good faith and that letter was misused; and that is his conclusion. I won't receive it.

Mr. Loewy: Have you decided against offering 339?



Mr. Bergan: This is 339.

The Court: I refused it.

Mr. Bergan: Exhibit 340 I am not going to bother about.

The Court: I don't know what it is.

Mr. Bergan: It is another letter that has to do with the upkeep of the golf course; and I don't think it has any real materiality.

(In open court:)

By Mr. Bergan:

Q. Mr. Nixon, I hand you now what has been marked as defendants' exhibit number 341 for identification and ask you to examine that; and after having examined it tell me whether you know what that is? A. This is an agreement——

Q. Do you recognize it? A. I recognize it; yes.

3450 Q. Have you seen that document before? A. I have.

Q. Do you know what that document is? A. It outlines the conditions in which we would——

Q. I don't want you to go into the details of the document, sir. A. It is an agreement between Snead-Nixon and PAP, Inc., and Country Club Developers, Inc.

The Court: And is it an agreement that was executed?

The Witness: It was; yes, sir. This one was never entered into.

By Mr. Bergan:

Q. Does that agreement bear a date?

I think you will find it either on the last page or the top of the first page. A. May of 1961.

The Court: A blank day of May?

Mr. Bergan: Yes, sir, just the month of May, 1961.

By Mr. Bergan:

Q. Does that document in May of 1961, Mr. Nixon——

Mr. Bergan: Your Honor, I think we had better come to the bench, if we may.

The Court: Come to the bench.

(At the bench:)

Mr. Bergan: I am in an area where I think I had  
3451 better tell everybody where I am going.

The Court: This is a proposal.

Mr. Bergan: Actually, it was an agreement in which the parties had agreed—By that I mean Post-Allen-Pickett and Snead-Nixon—but you may notice in the first line of this agreement that it becomes effective only upon the approval of Judge Leonard P. Walsh.

The Court: It was never approved.

Mr. Bergan: It does, in fact, state another proposal for Snead-Nixon to bail out Lakewood and take over the position of Post-Allen-Pickett and it is somewhat different from the first one.

The Court: I don't think you can get this document in. I will hear from Mr. Loewy in a second whether or not he agrees with me. I think you may interrogate the witness as to whether or not after that aborted 338 agreement that at another time another agreement was entered into between the parties, between Snead-Nixon, PAP, Inc., and Country Club Developers, that all of the interested parties were agreeable to.

Mr. Bergan: The difference between this agreement and the earlier agreement—at least the most significant difference—is that this is an agreement for a loan from Snead-Nixon for \$350,000.00 to the promoters; and if the  
3452 promoters defaulted on the loan then it would it would automatically go to Snead-Nixon.

The Court: The point is the receivership court wouldn't approve it.

Mr. Bergan: I assume that is the reason——

The Court: So, I think you can't say they had any agreement. They had discussions along that line but never any agreement.

Mr. Bergan: Well, it is an agreement subject to the approval of the Court.

The Court: Let me see it. [Reading] "That this agreement shall become effective only upon the approval of the Honorable Judge Leonard P. Walsh." In other words, it is a tentative agreement contingent upon the approval of the Court. It is a proposal that they entered into. I can't see how you can get that in evidence. It is an aborted agreement. There were discussions carried on between the Snead-Nixon Corporation and the defendants, their corporations, looking towards the matter of financing. And, of course, the answer would be yes. And, was it ever accomplished? No. I don't know how you can go beyond that. You don't have any agreement.

Mr. Bergan: Can I inquire, in addition, whether any agreement they reached had to be approved by the membership and the Court at that time, if he knows?

3453 The Court: Do you mean as to why nothing was concluded?

Mr. Bergan: Yes, sir.

The Court: It seems to me, you could ask whether anything was concluded. One thing is that probably the membership wasn't agreeable to it and it wasn't acceptable to the Court. Have you any objection to that?

Mr. Loewy: No, Your Honor.

The Court: After all, actually, what Mr. Bergan and Mr. Dyson show in here is, in connection with their good faith defense, that the defendants were trying to do everything they could to bail this thing out. And they had some negotiations with Snead-Nixon, and the reason that they didn't succeed is that the members wouldn't agree to it. I am sure that is the defendants' position.

Mr. Bergan: That is right.

The Court: And the Court wasn't agreeable to it either.

Mr. Loewy: I guess I will be up here later, but the reason that nobody was agreeable to it was that none of the proposals included the defendants putting up anything of their own as collateral for this financing.

The Court: I assume you are going to bring in a rebuttal case on that?

3454 Mr. Loewy: I will have to. We will be here until July.

(In open court:)

By Mr. Bergan:

Q. Mr. Nixon, following the agreement of March 23rd, 1961, which is defendants' exhibit 338, and which you testified never came to fruition, were there further discussions between you and Mr. Post, Mr. Allen and Mr. Pickett relating to the securing of financing for the Lakewood facilities? Exhibit 338 is the one which you identified earlier and which was read. A. What was that?

Q. Following this agreement of March 23rd, 1961, which you testified never came to fruition, did you have additional discussions with Mr. Post, or Mr. Allen or Mr. Pickett relating to securing financing for the facilities at Lakewood? A. Do you mean additional terms or different terms?

Q. After the date of March 23rd, did you have additional discussions? A. I am reasonably sure that we did.

Q. And did those discussions—

Mr. Loewy: Your Honor, he is really not quite sure they had them yet.

The Court: Well, you have got something there to refresh his recollection.

3455 By Mr. Bergan:

Q. Well, would you look at this defendants' exhibit 341 for identification?

The Court: I think you had better read it through, Mr. Nixon. It isn't what it says now; it is what you remember, if you can't remember all the facts.

Have you finished reading that?

The Witness: Yes, sir.

By Mr. Bergan:

Q. Now, Mr. Nixon, after having read that, do you have any recollection that after March 23rd further discussions

were entered into between you and Mr. Pickett, or Mr. Allen or Mr. Post with respect to securing financing for the club? A. My dates are—I had so many meetings on this thing, but I do recall probably one of the last meetings I had was with Mr. Post in Louisville, Kentucky, with our lawyer when he flew down there. And, as I recall, this was sometime in the spring of 1961, which very well could be after this date.

Q. Do you have a recollection of having seen the document in front of you in 1961? A. I am sure I do; yes.

Q. Did the discussions which you just indicated you had result in a proposal being made with respect to financing at Lakewood other than this one to which you testified 3456 earlier, exhibit 338? A. As I recall, our position on it—the one that we were considering favorably—was the original one. Thereafter we may have discussed other forms, but the Snead-Nixon interest was this was the plan we wanted to follow, and that any other plan we would have to go into a little further. We were prepared to go through with this one.

Q. By “this one” you mean the one in your left-hand, exhibit 338? A. Right.

Q. Were there other discussions with respect to other plans which may have contained other terms?

Mr. Loewy. Your Honor—

The Court: I think he has answered that.

Mr. Loewy: I think he has said that a few times.

The Court: As I understood it, his testimony was just a moment ago that they had in mind the plan that appears in defendants’ 338, and that anything else they would have to go into further.

Did you have anything else besides that definitely agreeable to you?

The Witness: Nothing definitely. I think probably some suggestions may have been made from time to time over the telephone and whatnot, but this is the plan that 3457 we were interested in. Anything else we were going to take under advisement before we considered it.

By Mr. Bergan:

Q. And this is the one that bears Exhibit number 338?

A. Yes.

Mr. Bergan: I have nothing further, Your Honor.

The Court: Mr. Dyson, do you wish to examine?

Mr. Dyson: I have no questions, Your Honor.

### Cross Examination

By Mr. Loewy:

•   •   •   •   •   •   •   •  
 3460     Q. Now, Mr. Nixon, during your trip to Pioneer  
          Point, do you recall discussing with Mr. Allen where  
 they were getting the money to finance all these other  
          clubs? A. I didn't enter into any financial dis-  
 3461 cussions at all. I can't remember any such dis-  
          cussions. He may well have asked us how much we  
 thought it would cost to build a golf course, among other  
 things.

Q. I don't mean about you and Mr. Snead putting up  
 any money. I mean, did you ever inquire of Mr. Allen  
 where he was getting the money to start other country  
 clubs after Lakewood? A. It doesn't stick out in my mind. I  
 may very well have.

Q. Do you recall whether or not on a trip to Pioneer  
 Point you asked Mr. Allen something to the effect, doesn't  
 it entail a lot of cash to start a club like this?

Mr. Bergan: Excuse me. To start a club like what?

Mr. Loewy: Like Pioneer Point.

By Mr. Loewy:

Q. And Mr. Allen answered that to you in some way? A.  
 I can't say that I asked him to name any specific amount.  
 We may have had general discussion about it.

Q. Yes, that is what I mean, that you asked him a ques-  
 tion. Not the amount, but didn't you ask him the question,  
 didn't it take a lot of money to start one of these things,  
 and where are you getting the money? A. I don't think I

asked him where he was getting the money. I didn't figure that was any of my business.

Q. Did you discuss that with him though, if you recall?  
3462 A. I probably did. I mean, specifically, I can't say word for word anything that I said. There was only a general discussion on construction costs and things of that nature.

• • • • •  
3486 **Garland Gerald Nixon**

returned to the stand and was examined and testified further as follows:

• • • • •  
3489 Q. The question was, when Mr. Allen said to you, "Well, if it doesn't go, we have just lost \$25,000," did you say anything to him? A. Without referring to it, well I just said, "I hope you've got some money, because it might not work"—or something to that effect.

Q. And did Mr. Allen say anything to that comment, as you recall? A. I don't recall.  
3490

• • • • •  
3509 Mr. Dyson. Your Honor, at this point I propose to put a Mr. Warren Lockwood on the stand. His testimony would be to this effect, that he first met with the defendants, and specifically Mr. Pickett, in May of 1961, which was approximately two months after the conservatorship had come into being. Prior to that time he was a life member, and was at that time; that he talked with Mr. Pickett; that they eventually—Mr. Post, Mr. Allen and Mr. Pickett—agreed to turn over all their interests in Lakewood Country Club to Mr. Lockwood, and that Mr. Lockwood would complete the facilities and would own and operate the country club.

That is offered for two purposes:

3510 One, a continuing showing of good faith by the defendants, in that they were working to in some way give the members what they had contracted for; and,

secondly, that since Mr. Lockwood was willing to take over the defendants' interest in the club, it was an economically feasible and sound proposal that they had originally.

That, in effect, is what he would testify to; and also that he did submit a proposal to the membership on two separate occasions for a vote—November 1st, 1961, which meeting turned into a chaotic affair, and he withdrew his proposal. At a subsequent time he was persuaded by a group of the members to resubmit his proposal to the membership, and did so, I believe on November 29th or 27th of 1961, when a vote was had and his proposal was defeated.

• • • • •

3514 Mr. Dyson. All right, Your Honor.

**Proffer in Behalf of the Defendant Pickett**

The defendant Pickett proposes to introduce a witness in his behalf at this time, a Mr. Warren Lockwood, who would testify that from the period of May, 1961 to approximately September, 1961 he engaged in a series of conferences and negotiations with the defendants Post,  
3515 Allen and Pickett, with a view towards taking over all their right, title and interest in Lakewood Country Club. For this he would pay to the defendants \$100,000. His proposal to the membership itself, to take over and operate the club, was the following:

For regular members, they could pay dues of \$12 plus tax, with \$25 minimum spending; or \$18 plus tax, which were dues only, and no minimum spending. This of course was at the member's option.

A life member could either have no dues, with a \$25 minimum spending requirement; or \$8.50 plus tax, which again is dues only, with no minimum spending requirement. And, again, this was at the member's option.

This testimony is offered for two purposes: First, as a continuation of the showing of good faith on the part of



the defendants; and also that the confidence that Mr. Lockwood had in the deal would show the economic feasibility of the operation of the club itself.

The Court. I think, from what you said here a few moments ago, you have a little bit more of a proffer to make than that, don't you? In the first place, the matter of the arrangement with the defendants was conditioned upon (a) two-thirds approval by the members of the club, —

Mr. Dyson. Yes.

The Court. —and (b) Court approval of the  
3516 planned procedure.

Mr. Dyson. Yes.

The Court. And, secondly, I believe that you brought out earlier that the negotiations, while they were entered into between Mr. Lockwood and the defendants commencing in May of 1961 and continuing through or at least until some time in September, 1961, they were never presented to the club until November, 1961.

Mr. Dyson. The so-called Lockwood proposal was submitted to the membership on two separate occasions—on November 1st, 1961, at which, as I previously stated, the meeting ended in a chaotic uproar and Mr. Lockwood withdrew his proposal. Mr. Lockwood again submitted his proposal to the membership, I would say, at the end of November—I think it was November 29th, 1961—and his proposal was defeated by a vote of the membership.

The Court. And what I added here as a part of your proffer, about two-thirds approval and Court approval.

You object to the proffer?

Mr. Loewy. Yes, Your Honor. And I—

The Court. I sustain the objection. You have already made your argument. I sustain your objection and, for the record, I am doing it for this reason: In the first place,  
3517 this is at a time subsequent to the takeover by the conservator. Further, the agreement or proposed agreement between Mr. Lockwood and the defendants was conditioned upon a situation or a relationship

between members and owners quite unlike what had been set up in the sales to these members, and particularly the life members. Therefore I don't consider this to be a good-faith showing here; or also on feasibility, under the conditions on which the life members came in.

Mr. Bergan. Could I have just one more word with Mr. Dyson about this?

The Court. Yes, surely.

(Defense counsel having conferred:)

Mr. Dyson. That is all we have.

Mr. Bergan. May the record show that on behalf of the defendants Post and Allen I join in the proffer?

The Court. Very well.

And I assume you are also objecting to the proffer adopted by counsel for the defendants Post and Allen? You are objecting to that?

Mr. Loewy. Yes, I am, Your Honor. And if I may also add that the government would proffer, although it is not necessary, there may be additional differences in the plans that Mr. Dyson has not stated.

The Court. Suppose you tell me what additional differences.

3518 Mr. Loewy. Transferability of membership, for one, being an important one.

The Court. Was there no transferability of membership in the plan by Lockwood?

Mr. Dyson. Your Honor, I am under the impression that there was transferability, although I can't state it with absolute definiteness.

The Court. All right. Is that all you wanted to add?

Mr. Loewy. Yes, Your Honor.

The Court. I am sustaining the objection to the proffer on behalf of the defendant Pickett. I am sustaining the objection to the proffer on behalf of the defendants Post and Allen.

• • • • •

Billy M. Allen.

being first duly sworn, was examined and testified as follows:

• • • • •

3522 A. I handled the solicitation of overseas business in Japan and the Far East, and also had representatives in the United States.

Q. Are you married, Mr. Allen? A. Yes, I am.

Q. How long have you been married? A. I have been married since 1961.

Q. Do you have any children, sir? A. Yes, two.

Q. Mr. Allen, when were you born? A. April 26, 1927.

Q. How long have you known Troy Post, Jr.? A. I came to Washington in 1957, and I think Troy, Jr. had just graduated from college and was here with the American Investment and Income Fund. And I came here in that capacity, working on American Investment Income Fund; and he was here in Washington at that time. And we met.

Q. Go ahead. I didn't mean to interrupt. A. We met in Washington in 1957. In 1957 I came up with his father, in the American Investment and Income Fund.

3523 And Troy Post, Jr. was acting as the attorney in filing—

The Court. I don't think that's the answer. I think the answer is how long you have known him—since 1957.

The Witness. Oh, 1957. Pardon me.

By Mr. Bergan:

Q. How long have you known Mr. Pickett, approximately? A. Since approximately the latter part of 1957 or the first part of 1958.

• • • • •

3542 Q. Now, Mr. Allen, what kind of facilities had you and Mr. Post and Mr. Pickett discussed providing at the Lakewood Country Club? A. Facilities along the same line as Glenhaven Country Club in Houston. This

would include three swimming pools. That would be two fairly large pools and one small pool, with an exceptionally large pool area. And we had also planned a cabana area for the pools. At this time, however, we did not know we would be required to have a bath house.

We planned a club house, approximately just a little bit larger, maybe, than the one at Glenhaven, but similar to it.

We planned an 18-hole championship golf course, with originally a pitch and putt, three-par. But later on we extended this to be a little shorter than a full, regulation nine-hole course.

It was to be the type of club that we would have enough members in the club who would participate that from the food we would possibly break even, possibly make a little profit. And there would be a profitable bar in the club. In other words, it would support itself from the activity of the club, not limited to, say, like most country clubs, to four or five hundred members, or a thousand members with only four or five hundred active. In most of these clubs you can go in the dining room any day in the week and you won't find but two or three people. Our club was to be different from this.

• • • • •  
3546 The Court. You said there were three types of membership. What was the first one, a corporate membership, you say?

The Witness. Yes.

The Court. And the second was the life?

The Witness. The life membership and the regular membership.

The Court. And you asked him what was the difference between them.

By Mr. Bergan:

Q. What was the difference between those three types of membership? A. As to the exact status of the corporate

membership, I just don't know at this time. But the regular membership would be with \$12 monthly dues, after purchase of the membership, with dues to increase 3547 at the end of I believe the second year to \$14 a month.

The life membership contained no dues. And the only responsibility after the purchase of the life membership would be the payment of food, beverages, possibly cart rentals, locker fees, and that sort of thing.

Q. Let me ask you, was this explained to the members of the board of advisors at the meeting which you indicated took place shortly before the ad appeared? A. Yes.

Q. The various memberships that were available? A. Yes.

Q. Did you also discuss with the board of advisors at that meeting the numbers of members of various categories? A. Well, yes. We told the advisors that we would have approximately 150 to 300 life members out of the first thousand memberships that were sold.

The Court. Out of the first how many, the total, sir?

The Witness. Approximately a thousand memberships.

By Mr. Bergan:

Q. Mr. Allen, had you and Mr. Pickett and Mr. Post considered among yourselves the numbers of the various classes of members which you would have? A. Well, we used pretty much the format of Glenhaven Country Club.

And we had discussed it, yes.

3548 Q. Who was in charge of the promotional campaign, Mr. Allen, that followed the appearance of that first ad which you have just identified? A. You mean in charge of sales?

Q. Yes. A. We had a sales manager that was provided for us, by the name of Mike Willhite. He was provided by Wayne Freeland and Jim Hayes.

Q. If you know, will you describe the procedures on sales of memberships at the club. A. Procedure?

Q. Well let me ask that question more precisely. This exhibit, Government's Exhibit 61, the first ad, had a return card on it to be sent in, and also a telephone number to be called. What happened when the card arrived or the telephone was called? A. On receipt of a telephone call or lead in the mail, the lead was first logged in the office by the girl; or possibly Mr. Willhite logged some of them in. And then the leads were called for an appointment by a representative. And then the representative would take the brochure. We used the brochure at this time, the Glenhaven Country Club brochure. He would take the brochure, along with a set of instructions. and contact the prospective member.

3549 Q. Approximately how many representatives did you have? A. At this time?

Q. Yes, sir. It would be late July or early August of 1959. A. I would have an idea of around ten.

Q. Generally speaking, who employed them, Mr. Allen, if you know? Who selected them? A. Well, Mr. Willhite would have been in charge of them. I may have sent some salesmen to Mr. Willhite for instruction, or something like that.

Q. Had any particular training been given to these salesmen? A. Yes.

Q. What type of training or instruction? A. When we originally started, during the first ad or right at the time of the first ad, and before the return, we had a general sales meeting. And at this time, Mr. Hayes, I believe, held the sales meeting at this time. And I don't know whether Mr. Willhite was there or not; but I feel sure he was.

Q. Were you present? A. I believe I was.

Q. Now, you started to describe the procedure, that an appointment would be made for a representative to  
3550 call upon someone who had made an inquiry. What would happen, in practice, following that? A. If the prospective member filled out the application and tendered it with a check, it was turned over to Mr. Willhite and it was logged in a book, and the check put in the bank.

Q. Did you personally make sales of any memberships?  
A. Yes.

Q. During the period of July and August of 1959, did you regularly make calls upon prospective members? A. Yes.

• • • • •

3561 By Mr. Bergan:

Q. Now, Mr. Allen I am going to take you back to July of 1959 when the membership campaign began and ask you what your goal was when the membership campaign opened? A. Originally it was stated at the zoning meeting our goal would be eventually a minimum of 2,000 members, but our goal at the beginning of the campaign—well, I better say it a little different.

The way I understood your question to be, when we started the advertising and to develop a club, we felt that if we—the indications were we get 800 members the first year, we would have a successful program and that we could afford to go into it and in other words full blast into the program.

3562 Now if by the original ads and the leads that would be returned it didn't indicate we could do this the first year, we were under the understanding that the best thing would be to send everybody's money back, pay the advertising, lose the operation money and so forth, and forget it. But we felt we could do 800 or possibly 1,000 members the first year it would have a successful program.

Our goal was to be 2,000 members eventually but by the return that came in on the ads——

The Court: I think that is——

By Mr. Bergan:

Q. The next question I have for you is whether following the response to the promotional campaign you made any determination as to whether what you have described as the original goal could be met? A. Yes, we had a very

good return on ads. In our opinion it would be no problem and we would have no problem in securing not only 800, but probably during the first year or year-and-a-half, securing a full 2,000 members.

Q. I believe I asked you before lunch whether you personally made any membership sales? A. Yes, initially.

Q. Did you make the membership sale to William 3563 Hepburn? Do you know William Hepburn? A. Yes.

You might say I made the membership sale to William Hepburn and you might not. I didn't meet William Hepburn until after he became a member of the club. If you would like me to explain, I will.

Q. Yes. A. The reason I remember the situation was because I had coffee with William Hepburn's wife at his house, and Mr. Hepburn was out of town at the time I made the presentation to her. She kept the application, to my recollection, and later on I think Mr. Hepburn came down the office with his application. He was not present at the time I talked to Mrs. Hepburn.

Q. Were you present at the time he came by the office? A. No.

Q. Mr. Allen, I show you what has been marked as Government's Exhibit 173 for identification, and then remarked as Defendant's Exhibit 27 for identification, and ask you if you know what that is. A. This is an application for life membership in Lakewood Country Club.

Q. Whose application is it? A. William A. Hepburn, 49.

3564 Q. That is his age, 49? A. Yes.

Q. Referring to the back, does it bear your name? A. Yes.

Q. Is that your signature? A. No, it's not my signature.

Q. It's not your signature.

Mr. Bergan: I will offer Defendant's Exhibit No. 27, Your Honor.

The Court: Any objection?



Mr. Loewy: May we approach the bench, Your Honor?  
 The Court: Come to the bench.

(At the bench:)

Mr. Loewy: Mr. Allen says that is not his signature on the back.

Mr. Bergan: That is precisely the reason I am offering it.

Mr. Loewy: I don't know how Mr. Allen can offer it.

Mr. Bergan: Mr. Hepburn identified this during the Government's case as his membership application. He also went into a long story as to what Mr. Allen told him in his house.

The Court: Isn't this in as a Government exhibit?

3565 Mr. Bergan: No, that is just for identification.

Mr. Loewy: I never even showed that to Mr. Hepburn. I had it marked, and I think I said this before, I had it marked and I just took it right back to the table.

Mr. Bergan: I had it marked during Hepburn's cross.

The Court: Did he identify it?

Mr. Bergan: He identified it during my cross. I would have to look at the transcript.

The Court: Which did you use?

Mr. Bergan: I had it remarked as Defendants' Exhibit No. 27.

The Court: Defendant's Exhibit No. 27 for identification. What day?

The Deputy Clerk: Marked for identification on May 12th.

The Court: Hepburn?

The Deputy Clerk: Hepburn.

Mr. Loewy: It was marked during Hepburn's testimony, that's correct.

The Court: It would be his application.

Mr. Loewy: I don't remember what he said about it.

Mr. Bergan: I have a specific recollection, Your  
 3566 Honor, of him identifying his signature on the back-side, per MH, Mary Hepburn.

The Court: Defendant's No. 27?

Mr. Bergan: Yes, sir.

The Court: Here it is, Mr. Bergan.

(Reading from transcript, P. 1656:)

"Q. Now let me show you what has been marked now as Defendant's Exhibit No. 27 for identification, and ask you, sir, if you can identify that?

"A. Yes, sir. I can. I—not necessarily the document as such. I recognize my wife's signature where she signed my name to it with her initials.

"Q. Now, can you identify the writing?

"First, let me ask you, what do you identify it to be?

"A. I am accepting that it is what it says it is and I have seen others of these, so it is a Lakewood application.

"Q. Can you identify the writing on the front of that particular document, Mr. Hepburn?

3567 "A. Yes, sir, I believe I can. I think I recognize the writing in blue as my wife's.

"Q. So the entire document is filled in by your wife, at least on the front?

"A. Yes, that is correct.

"Q. All right.

"It is signed by your—your name is signed by your wife per MH?

"A. That is correct.

"Q. I see.

"Now are you able to state whether this particular document was filled out while Mr. Allen was present at your home?"

What document were you talking about here?

Mr. Bergan: It had to be this one.

The Court: It was filled out?

Mr. Bergan: It must have been filled out at a later date. I asked Hepburn whether it was filled out during the time Mr. Allen was present at his home.

The Court: Who is supposed to have filled this out?

Mr. Bergan: Hepburn testified that he recognizes the writing on the front as that of his wife.

3568 Mr. Loewy: I think he wasn't quite that definite.  
The Court: (Reading:)

"...I recognize my wife's signature where she signed my name to it with her initials."

Mr. Loewy: Right above he says—  
The Court: (Reading:)

"I am accepting that it is what it says it is and I have seen others of these, so it is a Lakewood application.

"Q. Can you identify the writing on the front of that particular document, Mr. Hepburn?

"A. Yes, sir, I believe I can. I think I recognize the writing in blue as my wife's."

This thing he definitely recognizes as his wife's signature.  
Mr. Loewy: Yes.

The Court: Is that your only objection?

Mr. Loewy: My objection is that Mr. Allen doesn't know what it is at all, and I don't think Mr. Hepburn said what it was.

The Court: It isn't his signature.

3569 Mr. Bergan: That is precisely the purpose I am offering it.

The Court: You didn't have to wait for this point to offer it.

Mr. Bergan could have offered this in evidence earlier, and had Allen say that was not his signature.

Mr. Loewy: If Your Honor feels Mr. Hepburn's identification is sufficient, I don't have any contest.

The Court: I do.

I will receive it in evidence.

(In open court:)

The Court: Defendant's 27 is received in evidence.

(Thereupon, Defendant's Exhibit No. 27, previously marked for identification, was received in evidence.)

• • • • •

3570 Q. Did you have any conversations with Mr. Pickett or Mr. Post, among the three of you, with respect to the imposition of a minimum spending requirement at the Lakewood Country Club, and I am fixing the time for these conversations in the summer or early fall of 1959? A. We didn't feel it was necessary to impose minimum spending.

The Court: I think the question was, did you have 3571 any discussions with your fellow promoters, the three defendants, did you discuss among yourselves the matter of a minimum spending requirement, yes or no, during the summer and fall of 1959; did you discuss, I think the first part of it was.

The Witness: Yes.

The Court: Now, what were the discussions?

By Mr. Bergan:

Q. What was the substance of the discussions? A. We did not feel it to be necessary to impose a minimum spending requirement for the average, it's my understanding, and supported, I believe, that the average spending of active members in a club will average between twenty-five and thirty dollars a month. This, with 2,000 members, would be \$50,000 a month in spending.

Q. Mr. Allen, did there come a time when you determined to increase or make available more life memberships than the original 150 or 200 which you testified earlier? A. Yes. We discussed this in the latter part of 1959.

Q. Did this come about? A. Well, we felt as long as we were assured of getting \$10,000 a month income, or 700 3572 members in round figures, dues-paying members, that this would be more than adequate dues income to support facilities and give us a profit, and if we could secure 2,000 members, regardless of whether they were dues-paying or they were life members, we would be able to get this wanted spending of theirs in the club house and help support the club house operations and make it

more profitable, get less income with 2,000 members than with 700 members.

To further answer your question, to reduce the amount of money that we would have to borrow on, I believe some of our lease arrangements I spoke of before, and to enable us to enlarge the facilities immediately with the wait, and do our enlargements possibly a year from then or two years from then, we felt to reduce this amount of lending that would be required to have, we would be better off deferring our dues income profit and accept more life members and raise the price of our life memberships soliciting. I don't think we raised them right then, but we did raise them. We thought we raised them out of range, but they still bought them.

• • • • •

3630 Q. Do you recall in the fall of '59 having conversation with Mr. David Betts on the telephone? A. No, I don't.

Q. You don't recall Mr. Betts placed a call to you at your apartment in Arlington Towers? A. In the fall of '59?

3631 Q. Yes, in the fall of '59. A. No, I do not recall it.

Q. The fall of '60, move it up one year to the fall of '60? A. I do not recall the telephone conversation.

Q. Well, in the summer or early fall of 1960 had construction stopped on the Lakewood Country Club clubhouse? A. Construction stopped at a time and then started back again and then, I think, stopped again.

Q. Do you recall receiving any inquiries or calls from members as to why the construction stopped? A. I possibly did but I do not recall the conversations.

Q. And you don't recall any telephone conversations with David Betts, specifically, relating to how many life memberships had been sold in the fall of 1960? A. No, I do not.

• • • • •

3638 Your Honor may recall, that during the last week  
 3639 or perhaps the week before that we put in evidence  
 a further elucidation of the money which went to  
 build the Glen Haven Golf Course. You recall that one of  
 the Government's Exhibits, and I believe it is 183, shows  
 some sixty some odd thousand dollars going from the Lake-  
 wood complex—and I am not sure from which corporation  
 —to an organization known as Golf Contractors. During  
 Mr. Post's testimony and also during Mr. Freeland's testi-  
 mony we put in evidence the joint venture agreement be-  
 tween Country Club—let me name the individuals rather  
 than try to fix the corporations—between Allen, Post and  
 Pickett on the one hand Golf Contractors on the other  
 hand by which money went to—although not directly to  
 Glen Haven—construct the golf course at Glen Haven.

There were a series of seven promissory notes which  
 were returned personally signed by Freeland and Hayes  
 and, finally, a substitute note for \$104,000.00 made payable  
 to Golf Contractors, which was shown to be, for all practical  
 purposes, a wholly-owned subsidiary of Pickett, Allen and  
 Post, and supported by a deed of trust on the property, all  
 of this occurring prior to the conservatorship.

Now, Mr. Ragsdale is the Vice President of the Southern  
 Title Company, Incorporated, in Houston, Texas. He is  
 able to testify, not only from the records of the Southern

Title Company, but from his own personal recollec-  
 3640 tion, since he handled the transaction.

The Glen Haven Country Club in Houston under-  
 went a name change in approximately late 1961. It became  
 the Sandy Lakes Country Club. There was a mortgage put  
 on the Sandy Lakes Country Club property. It was refi-  
 nanced, in other words, and \$500,000.00 was made available  
 to complete the entire complex.

Of that, a check in the amount of \$82,000.00, a copy of  
 which he has, was sent to Vinton Lee to retire the balance  
 of the note and the indebtedness resulting from the trans-  
 action in respect of Golf Contractors.

He has, in addition, the original of the note. You may recall, we put a copy of the note in evidence. He has the original of the note marked paid in full. He has a release of the lien signed by Vinton Lee, which was filed in the Fort Bend County, Texas, Clerk's Office noticing that the lien was released in full.

In other words, what I want to do through Mr. Ragsdale is complete the transaction. The Government showed the money went out. We have now shown the manner in which it went out. Now we want to show it coming back pursuant to the original lien. That is, essentially, what Mr. Ragsdale's testimony will be.

The Court: Mr. Loewy?

3641 Mr. Bergan: Incidentally, he has not seen any of these documents, Your Honor. As a matter of fact, I didn't see them until early this morning.

Mr. Loewy: Your Honor, there are quite a few documents here. I haven't read them all but I do have an argument which I can make preliminary to knowing exactly what they say.

I assume that the only theory of admissibility that Mr. Bergan puts forward is that these transactions long after the conservatorship and after Messrs. Post, Allen and Pickett are out of the club are evidence of their good faith in connection with the original promotion. I don't believe that is so, Your Honor.

I believe there is authority that, in fact, later acts of good faith are no defense. In fact, we have an instruction we are submitting which we are requesting on that ground. I think there is authority that later acts of good faith might be admissible to show the intent of the defendants but, indeed, they have to be acts of good faith by the defendants.

The Court: I thought you had an instruction that later acts of good faith are not a defense?

Mr. Loewy: They are not a defense, Your Honor, but they are admissible in going towards the limited issue of

intent; that someone who would do something so  
 3642 nice later would not be the kind of guy who would  
 do something so bad early in the game. But, insofar  
 as their being a defense, of course, they actually are not.

Mr. Bergan: Excuse me for interrupting, but I think my friend is starting off on the wrong foot with respect to the purpose for which I am offering these documents.

I don't offer them so much to show the good faith of the defendants. I offer them to show the completeness of a transaction, which the defendants put underway long prior to the conservatorship.

The Court: What part of the transaction did they put underway long before the start of the conservatorship?

Mr. Bergan: The money going out pursuant to notes, pursuant to a lien on the property—

The Court: Well, that is in evidence, is it not?

Mr. Bergan: It is all in evidence.

Now, what I want to show—I wouldn't do this voluntarily, perhaps, but the Government has already shown the money going out. Now, I think I am entitled to complete the transaction to show that the money came back; and I think I am entitled to an inference from which I can argue that it came back because of the protective steps which the defendants had taken prior to the conservatorship when this money went to Golf Contractors. It is not so  
 3643 much offered to show good faith in 1962, which is when this money came back. I want to correct any misapprehension there may be on that point. It is to show the completeness of a transaction which the Government first put evidence in on.

The Court: Is it your point, Mr. Bergan, the money came back because of the lien that was placed upon the property and the notes were secured? Is that what you say?

Mr. Bergan: Well, of course, Mr. Ragsdale can't testify as to why the money came back. But the fact of the matter is that there were a series of notes when the money went out. There was a lien placed upon the property; and all of



this is not in evidence. Subsequent to that, now, the money is coming back and the lien is released.

I think I am entitled to an inference from that to which I can argue. But before I can get to that point I have to get in evidence the money coming back.

The Court: The inference being what, Mr. Bergan?

Mr. Bergan: The inference being that these defendants just didn't throw money down the drain, as it were. This particular amount of money went out subject to the normal protections which envelop a commercial transaction between two strangers.

The Court: Well, you have got that in, already.

Mr. Bergan: Now I want to show the money coming back. Mr. Loewy has shown the money going out and cut it off as of March 31st, 1961.

The Court: Secured though by a deed of trust.

Mr. Bergan: He didn't show that. I showed it.

The Court: Well, it is in evidence, isn't it?

Mr. Bergan: It is in evidence. Now I think we are entitled to complete that transaction and show the fact that the money was secured by such deeds, liens or deeds of trust on the property, resulted in the money being returned. Now, it was returned when these defendants were no longer in control of the Lakewood complex but, in fact, it was returned; and I think we are entitled to get that evidence before the jury.

The Court: Would you say the same thing is true of everything else that the conservator recovered?

Mr. Bergan: I think I would have a much more difficult argument with respect to money which went out that had no, what I would call, protective trappings around it. For example, if they just wrote a check to somebody and said here is \$20,000.00, and then the conservator went out three years later and filed a suit against that particular person and recovered that money. I don't think I could—In fact, I know I wouldn't stand here and make the argument that I was entitled to show that money coming back. But when

a normal commercial transaction is entered into, and  
3645 during the course of Mr. Loewy's cross examination  
of Mr. Post with respect to these four contracts, you  
may recall—I think it is 306, 307, 308 and 309, defendants'  
exhibits—he made quite a point by showing that the same  
people signed every contract.

The Court: Those were contracts for what now?

Mr. Bergan: Contracts between Golf Contractors and  
Freeland and Hayes on the one hand, and Freeland and  
Hayes having interests in the Glen Haven Country Club,  
and then contracts between Country Club Developers and  
Golf Contractors. There were a series of four documents.

The Court: All revolving around the Glen Haven Club?

Mr. Bergan: All involved around this transaction. And  
Mr. Loewy was, obviously, laying the groundwork—at least  
in my mind—for an argument that they just sat around  
the table and drew up contracts to protect themselves in  
case the cops came running. But now I think I am entitled  
to show that this was a normal commercial transaction, that  
the contracts were entered into, that the money went out,  
the promissory notes were returned, that a lien was placed  
upon the property, and that the series of seven promissory  
notes totalling \$104,000.00 was reduced to one. Now, all  
of this is in evidence.

The Court: My trouble, Mr. Bergan, is this with  
3646 respect to your argument, that except for the secur-  
ity taken to secure these notes, why couldn't you just  
as well argue that every other loan that the defendants  
made with these other companies, which were unsecured,  
were in the normal course of good business?

Mr. Bergan: I don't think I can argue that, Your Honor.

The Court: And then you would go and show that the  
conservator got the funds back?

Mr. Bergan: I don't think—being very candid—I can  
stand up and take credit for money that the conservator  
got back.

The Court: Well, he got it back here.

Mr. Bergan: Well, I think I can argue that this money came back irrespective of the conservator. But it came back to the conservator. He happened to be there. But this is not an instance, at least these documents would reflect, that this is not an instance in which the conservator went out and got it.

The Court: What is the date of that deed of trust?

Mr. Bergan: The deed of trust is dated in June, 1961; and Golf Contractors, which is the payee on that deed of trust, was not a conservatorship at that time. Golf Contractors was put in conservatorship sometime in the fall 3647 of 1961. It was not placed into the conservatorship in March when the rest of the complex was put in. This deed of trust is dated sometime before the conservatorship of Golf Contractors.

The Court: Then Glen Haven became Sandy Lakes. When was that?

Mr. Bergan: Late '61 or very early '62. I would have to look at the papers from the Secretary of State. It looks like the 8th of December, 1961.

The Court: And then there was some refinancing after that?

Mr. Bergan: That is correct.

The Court: They put a new mortgage on the property?

Mr. Bergan: Yes, they refinanced it to the tune of a half a million dollars.

The Court: And that is when they paid off the \$60,000.00 or whatever it is?

Mr. Bergan: \$82,000.00.

The Court: To Golf Contractors?

Mr. Bergan: Right. And it is in the form of a check made payable to Vinton Lee, Conservator of Golf Contractors.

The Court: At that time he was Conservator of Golf Contractors?

Mr. Bergan: Yes, and this was in February. I 3648 think the check is dated in February of 1962. At any rate, it is into 1962.

The Court: What was it you said, you had some authority or something or other? What was it you were telling me a little while ago on this good faith aspect of it?

Mr. Loewy: The argument I was making—I don't believe I said I had authority, Your Honor—was that this is not an act of the defendants at all. It is just an incidental transaction, this money coming back way after the fact, and it is, indeed, a transaction which the defendants did everything they could to interfere with. And, again, we start trying a new case if we get into Vinton Lee's efforts, which ended up in his being able to get this money back. Then I have to go in and show everything the defendants did to prevent him from getting it back. If it doesn't come in for good faith, Your Honor, I don't think there is any theory of its admissibility. Just as if Vinton Lee found in a trash can a lot of money buried in the bathhouse, I don't think that would be admissible either as part of the defense.

The Court: Suppose you make a proffer of what you have in mind, Mr. Bergan.

Mr. Bergan: All right, sir.

I would like to have these documents marked as exhibits as part of the proffer, if I may.

3649 The Court: Very well.

Mr. Bergan: Let me give them to you in chronological order.

The Deputy Clerk: Defendants' Exhibits 342 through 348 are marked for identification.

(Defendants' Exhibits No's

342 [Western Union Telegram]

343 [Disbursement Schedule]

344 [Check to Vinton Lee \$82,000.00]

345 [Ltr, May 16, 1962 to Lee from Ragsdale] Inclosure Release of Lien.

346 [Certificate, Sec. of State of Texas, Restated Articles Sandy Lakes Country Club, Inc.]

347 [Note \$104,000.00 signed by President of Glen Haven Country Club, Inc.]

348 [Release of Lien signed by Vinton Lee, Sequestrator]

were marked for identification.)

The Court: What is this witness' name?

Mr. Bergan: Mr. R. L. Ragsdale, [spelling] R-a-g-s-d-a-l-e, Vice President, Southern Title Company, Incorporated.

The Court: All right.

Mr. Bergan: I offer to prove through Mr. R. L. Ragsdale, the Vice President of Southern Title Company, Incorporated, that he has been Vice President of the Southern Title Company, Incorporated, since at least 1955, that during the period 1961 and 1962 he was personally acquainted with transactions relating to the Glen Haven Club, Incorporated, of Houston, Texas, which later became Sandy Lakes Country Club, Incorporated, of Houston, Texas, and a contract between that club and Golf Contractors, Incorporated.

I further offer to prove through this witness, that on or about December 8th, 1961, the Glen Haven Country Club, Incorporated, of Houston, Texas, filed restated and amended articles of incorporation with the Secretary of State of the State of Texas, as a part of which its name was changed to Sandy Lakes Country Club.

And, as a part of that, I would proffer defendants' exhibit number 346, a certified copy of the amended articles of incorporation, certified to by the Assistant Secretary of State of the State of Texas.

I would further offer to prove through this witness, that the then Sandy Lakes Country Club of Houston, Texas, caused a loan to be negotiated from the Gibraltar Savings Association in the amount of \$500,000.00, that this amount of \$500,000.00 plus certain additional amounts available was

disbursed by the Southern Title Company, Incorporated, of Houston, Texas, by and under the supervision of this witness, Mr. Ragsdale.

In that connection, I would offer the disbursement schedule, defendants' exhibit number 343.

A part of that disbursement schedule is a check in the amount of \$82,000.00 dated May 16, 1962, drawn on the Citizens State Bank of Houston, Texas, and made payable to Vinton E. Lee, Sequestrator, Sandy Lakes Country Club Mortgage Note, and bearing on the back the notation "Pay to the Order of Security Bank for Deposit to the Credit of Vinton E. Lee, Sequestrator Sandy Lakes Country Club Mortgage Note Payable to Golf Contractors, Inc., as a part of Lakewood Country Club, Inc., et al. Court Order of January 22, 1962."

That check is defendants' exhibit number 344 which I would offer as a part of the proffer.

Following the entry of that check, or the drawing and submission of that check,—Withdraw that, please. Prior to the drawing of that check, this witness, as an officer of the Southern Title Company, would identify a telegram purporting to be signed by Vinton Lee and addressed to Southern Title Company, 1104 Rusk Avenue, Houston, Texas, and which bears the defendants' exhibit number 342, and which reads as follows:

[Reading] "We are prepared to forward the note to you at the time of settlement so that you may mark it paid and satisfied and return it to the maker in exchange for a check to Vinton E. Lee, Sequestrator, Sandy Lakes Country Club Mortgage Note.

"The balance of the note payable to Golf Contractors, Inc., from Sandy Lakes Country Club is \$82,000.00."

It is signed "Vinton E. Lee, Sequestrator, Sandy Lakes Country Club Mortgage Note".

We would offer that telegram as part of the proffer.

Following the drawing of the check by the Southern Title Company, it was forwarded to Mr. Lee pursuant to

a letter signed by this witness, R. L. Ragsdale, and bearing defendants' exhibit number 345, which we would proffer as an offer as a part of this proffer.

This letter bears the date May 16, 1962. It's addressed to Mr. Vinton E. Lee, Investment Building, Washington, D.C.

[Reading]

"Dear Sir:

"Pursuant to your telegram of May 4, 1962, to Southern Title Company, we enclose herewith Southern Title Company Check No. 165247 to your order in the amount of \$82,000.00, as payment in full of the note payable to Golf Contractors, Inc., and a release of the mortgage lien securing the payment of said note.

3653 [Mr. Bergan continuing in the reading of Defendants' Exhibit 345 for identification, re proffer of proof.]

"We have consulted Mr. Walter P. Zivley, the trustee in said Deed of Trust, and he has approved your execution of the release of the mortgage lien. Please execute and acknowledge the enclosed release before a Notary Public and return the same, together with the original note marked 'Paid' and any other papers you may have relating to this transaction."

It is signed: "Very truly yours,

"R. L. Ragsdale  
"Vice-President."

Following that, Mr. Ragsdale would identify the original of the mortgage note for \$104,000.00, dated June 14, 1961. And it bears Defendants' Exhibit No. 347, which we would proffer in evidence as a part of this proffer, marked on the bottom "Paid May 16, 1962, by Southern Title Company." And the initials are "R.L.R.", which this witness would identify as his own.

Finally, this witness would identify Defendants' Exhibit Number 348—and all of these exhibits which I have mentioned, incidentally, come from his file—which is a Release of Lien filed in the County Courthouse before the County Clerk in and for the County of Fort Bend, Texas, by which this Deed of Trust, Defendants' Exhibit 347, was released, and this Deed of Trust, Defendants' Exhibit 348, is 3654 signed by Vinton E. Lee, and it includes one paragraph:

[Reading] "WHEREAS, said note is now owned and held by Vinton E. Lee, Sequestrator, and to whom said note has been paid in full."

We would offer that document, defendants' exhibit 348, as part of the proffer.

Mr. Loewy: I object to it, Your Honor.

The Court: I sustained the objection.

Mr. Dyson: Your Honor, may the record reflect that I also move the offer?

The Court: Very well.

• • • • •  
3656

Mr. LeRoy W. Pickett,

a defendant herein, was called as a witness in his own behalf and, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Dyson:

Q. Would you state your full name, please, Mr. 3657 Pickett? A. LeRoy Wilson Pickett.

Q. And your residence, please? A. Myrtle Beach, South Carolina.

Q. And how old are you, Mr. Pickett? A. Thirty-five.

Q. Are you originally from the Washington metropolitan area? A. Yes, I am.



Q. Would you tell us how long you have lived in the Washington area? A. I lived in the Washington area from 1930 until I went in the Service in about 1950, and then I was back here subsequent to the discharge from the Service.

Q. Did you attend school in this area? A. I did. I attended high school at Bethesda-Chevy Chase High School and also college and Montgomery Junior College at Silver Spring.

Q. Approximately, what year did you enter the military service? A. 1950.

Q. Will you briefly describe what that service consisted of? A. I was drafted in in 1950, and subsequent to that I went to O.C.S. at Fort Sill, Oklahoma, where I was 3658 commissioned a second lieutenant. I then went to Fort Benning, Georgia, to jump school there and was assigned to the 82nd Airborne and then I went to Korea and was subsequently discharged; honorably discharged.

Q. After your discharge, Mr. Pickett, what then did you do? A. I attended the University of Virginia.

Q. And after that? A. I came back to Washington and went to work in the real estate business.

Q. By whom were you employed in the real estate business? A. Initially I was employed with Shannon and Luchs Real Estate.

Q. At approximately what time was this? A. Approximately 1955.

Q. And how long did you remain with Shannon and Luchs? A. A year, possibly a year and one-half.

Q. What next did you do? A. I went to work for Leon Ackerman also in the real estate business. We were engaged in the selling of a Florida project here in Washington.

Q. And how long were you employed by Mr. Ackerman? A. Approximately a year.

3659 Q. What did you do after you left the employ of Mr. Ackerman? A. I entered the securities field, the sale of securities.

Q. And with whom were you employed in that business?

A. I was with the Washington Planning Corporation and some other corporations in that complex.

Q. Can you give us an approximate time period in which you were so employed? A. I believe that would be about 1957.

Q. Now, directing your attention, Mr. Pickett, to late 1957 or 1958, did there come a time when you became interested in the possible development of a country club in the Washington metropolitan area? A. Yes, there did.

• • • • •  
3660 Q. Now, did you yourself take any particular action after these initial discussions? A. Yes. I had been in the real estate business and I talked it over with a number of people that I had acquaintance with in the real estate business as to land location and a general interest in the program.

• • • • •  
3668 Q. And did there come a time when you had a conversation with Mr. Freeland in regard to the number of members that you had obtained? A. Yes, there did. We had a considerable number of life members and I asked Mr. Freeland about that, the fact that we had sold quite a number of them.

3669 Q. Could you describe, generally, what that conversation consisted of? A. Well, I asked Mr. Freeland. At that time I don't know how many life members we had, possibly 800 or possibly more.

Q. Let me interrupt you just for a second. Could you fix this conversation in time for us? A. It would have been in late '59. I would say late '59.

Q. Would you continue, please? A. Yes. Well, I was concerned. I asked Mr. Freeland concerning the number of life members. And he said, you are just very fortunate that you can sell as many as you have. He said, don't worry about it, you need a minimum amount of income coming

in from your dues-paying members which would amount to about \$10,000.00 a month, which would have been about 700. He said, you can get all the dues-paying members you want just as soon as you open the clubhouse.

Q. Now, directing your attention to the fall of 1959, were you yourself engaged in any particular activities at that time regarding the development of the Lakewood Country Club? A. In the fall of 1959?

Q. Yes, if you can recall. A. Just on general work  
3670 with the various contractors. That is all I can recall.

Q. Now, directing your attention to the spring of 1960, was the construction of the facilities proceeding at that time? A. Yes, it was.

Q. Could you describe, generally and briefly, in the spring of 1960 what the progress was on all the facilities? By all the facilities, I mean the golf course, swimming pools, tennis courts and clubhouse. A. Yes. Our golf course was virtually complete from the construction standpoint. It had a growth period that we experienced before we could have it opened. In the spring the swimming pools were being constructed, as were the tennis courts, and the clubhouse had been started. The clubhouse had been held up slightly due to the expansion that we made and we had to rework the plans.

Q. Did there come a time when the swimming pools were actually completed and opened for use? A. Yes, there did.

Q. Do you recall, approximately, when that was? A. That was about the middle of July.

Q. Did there come a time, likewise, when the golf course was completed and opened for play? A. Yes, there did.

3671 Q. When was that? A. In August of '60.

Q. Was the entire course completed by August, 1960? A. No. We opened up 9-holes and then we opened up the other 9-holes a few weeks later, I believe in September with the match between Sam Snead and Arnold Palmer.

Q. Did there come a time when the tennis courts were completed and opened for play? A. Yes. That would be about the same time as the pools, about the 15th of July.

Q. And what was the stage of progress of the clubhouse facilities during the summer of 1960? A. It was coming along. It was a little bit behind what we anticipated because of the expansion that we had made of it.

. . . . .

3677 Q. Mr. Pickett, in connection with the refinancing, I believe you testified that you sent out a standard letter or package to prospective lenders, is that correct? A. More or less standard; yes.

Q. Would you look at Government's 161, which Mr. Melnick brought in with him, and tell me if that is it? 3678 Incidentally, as you go by that page, your signature appears on that letter, does it not? A. That is correct.

Yes, this would have been the basic type of proposal that would have been sent out.

Q. And it was based upon this sort of material that you and your associates were trying to get financing; isn't that correct? A. Basically, yes.

Q. Now, in this letter which is signed by you, Mr. Pickett, it is on the letterhead of the Lakewood Country Club, and the first paragraph states that:

[Reading] "Our company is engaged in the promotion, development and operation of country clubs in the Eastern United States. Clubs are now in the process of construction in Baltimore, Boston, Pittsburgh and here in Washington."

Now, you had no connection with the Pittsburgh Club, did you? A. No, I didn't.

Q. Nor with the Baltimore Club? A. That is correct.

Q. Nor with the Boston Club, did you? A. That is correct.

Q. In fact, the Lakewood Country Club, on whose  
3679 stationery this appears, the Lakewood Country Club  
had nothing to do with clubs in those three cities,  
did they? A. No, the Club didn't but I believe it states in  
there our group though.

Q. Well, you just stated, did you not, that you didn't  
have anything to do with these three clubs? A. No, but  
my partners in the Lakewood project did.

Q. Well, when you say "our company", Mr. Pickett, and  
signed the letter, doesn't that imply that you are included?  
A. Well, possibly, not necessarily. This was our company.  
I didn't have an interest in them but they did and I was  
signing it for them as well as myself. It was a standard  
form letter.

Q. Maybe I don't understand you, Mr. Pickett. If you  
had nothing to do with it, how could it be your company?  
A. Well, possibly the phrasing in here isn't correct, but it  
was intended to mean that the people who had an interest  
in Lakewood had an interest in these other clubs, excluding  
me.

Q. Excluding you, although you are the one who signed  
the letter; is that correct?

Mr. Dyson: Your Honor, he is arguing with the witness  
now.

The Court: I sustain it. You are arguing with him.

Mr. Loewy: All right, Your Honor.

3680 By Mr. Loewy:

Q. Now, Mr. Pickett, the second paragraph says—  
of this letter directed to your lenders—

[Reading] "By specializing in this business, we are able  
to employ professional and experienced personnel in the  
operational field for the club, such as restaurant manage-  
ment, therefore, contrary to the majority of country clubs,  
our clubs are profitably operated."

Now that, again, refers to "our clubs", does it not, Mr.  
Pickett? A. That is correct.

Q. And was the club in Baltimore ever profitably operated? A. I wouldn't know. I didn't have a connection there.

Q. But you stated here that your clubs were profitably operated in the paragraph before, referring to Baltimore, Boston and Pittsburgh? A. The letter refers to the other clubs. I had no connection with the other clubs.

Q. What about Boston, was it profitably operated? A. I wouldn't know.

Q. What about Pittsburgh? A. I couldn't answer that.

Q. So, in other words, Mr. Pickett, is it correct to  
3681 say that you sent to lenders a letter which contained information which you didn't have any knowledge of? A. No, that is not correct. We had an interest in Glen Haven and Glen Haven had been operated profitably.

Q. But Glen Haven isn't mentioned here, is it? A. I don't know.

The Court: Show him the letter.

Mr. Loewy: I am sorry.

The Witness: No, Glen Haven is not mentioned there.

• • • • •  
3696 A. Yes, that is correct. As a matter of fact, somewhere previous to this point we felt that it wouldn't be necessary to do any financing but we suddenly awoke to the fact that it would be.

Q. And from selling these memberships, these life memberships and the initiation fees, from the 700 or something regular members plus a little dues income you and Mr. Post and Mr. Allen collected a million and a half dollars, did you not? A. I believe that is approximately the figure, yes.

• • • • •  
3706 Q. Now, you proposed as directors, did you not, Mr. Pickett, for the Lakewood Country Club, Mr. Rogers, again? A. Yes, that is correct.

Q. And Mr. Van Veen again? A. Yes. That is correct.

Q. And Mr. Vranich again? A. Wait, I can't recall

whether they were proposed on our new slate or not. I assume that they were, but I just don't recall.

Q. Isn't it a fact, Mr. Pickett, that Mr. Vranick told you specifically that he didn't want anything else to do with it before his name was proposed a second time? A. I can't recall.

• • • • •  
3707 Q. Did you—You testified to certain proceedings at the meeting. Did you advise the members there or did Mr. Rogers advise them that five or six out of the nine directors whom you proposed were complimentary members? A. I don't recall that was said. No.

• • • • •  
3820 The Court: All right, I will take a look at those. Those also bother me, because there you are getting to fiduciary relationships and I am a little bit troubled with them.

Mr. Bergan: May I state, very briefly, just what my problem with 16 and 17 is?

The Court: Yes, I will hear you.

Mr. Bergan: Government's 16 and 17 are both charges that start out with the phrase "as the promoters of the Lakewood Country Club". What I think Mr. Loewy has done is that he has taken the word "promoter" in the pre-incorporation sense of the word "promoter", where you are in fact a fiduciary for the subsequent stockholders  
3821 for that corporation, and used it here in this charge, whereas the word he should be using is "developers" and not promoters. And I think he has taken this erroneous concept of the word promoter and used it as a springboard for what is, unquestionably, good law, that is money taken improperly by a fiduciary is a fraud. But I think he has gotten to this result by taking the word "developer" and substituting therefor the word "promoter" and then using the definition of the word "promoter" in the corporate sense, meaning the promoter of a stock corporation who has

a fiduciary obligation to the subsequent stockholders of that corporation. And this is really the basis of my objection to both 16 and 17.

The Court: I have been having trouble on these two and I will hear you now, Mr. Loewy. For instance, your case of Buckner, of course, was a trustee relationship with respect to the Philippine bond, serving a definite fiduciary relationship. Campbell, I believe, was the creation of—What was that, the mining company in the participation—

Mr. Loewy: Yes, in Montana, Your Honor.

The Court: Well, it was in the West, anyhow.

Groves—

Mr. Loewy: That was the protective committee, I believe.

Mr. Bergan: Stockholders protective committee, which are fiduciaries by statute under the bankruptcy act.

3822 The Court: Well, it is like the Buckner Case only it is under a different act, I guess. Do you say it is under the Bankruptcy Act Rule?

Mr. Bergan: My recollection of the Groves Case is that it is a protective committee under the Bankruptcy Act.

The Court: Hoffa, of course, was using the Union funds.

Mr. Bergan: In this particular Hoffa Case—there have been a good many of them—he was trustee of a trust fund.

The Court: Yes, monies coming from the various unions affiliated with the Teamsters, as I recall it.

Mr. Bergan: Well, it was even worse than that. It was actually an employee trust fund. They were monies which had, in fact, passed beyond the union into an employee welfare pension fund, of which he was a trustee. So in each of these four cases you start out with the defendants being trustees by definition. Of course, I can't quarrel with the second paragraph of the charge 16. Given that state of events it is an accurate recitation of the law.

The Court: My trouble is with the first paragraph of 16, Mr. Loewy. I will hear you on that.

Mr. Loewy: Your Honor, in my long association with the case I have never been able to think of Post, Allen and



Pickett nor has anyone else who I have come in con-  
 3823 tact with ever described them to me as anything  
 except the promoters of this non-profit corporation.  
 Developers is the word which I had never heard until I got  
 into Court here. All the civil papers were filed on the basis  
 of promoters. And I have done exactly what Mr. Bergan  
 said, in thinking they are promoters and applying the  
 duty which the law seems to impose on a promoter to  
 them; that is to deal honestly and fairly and the duty to  
 disclose all material facts. It seems to me that they did  
 exactly what all the treatises say a promoter does. They  
 took the preliminary action to get the money together to  
 put the corporation into operation. If they were just de-  
 velopers, as Mr. Bergan said they are, I would picture  
 a developer as someone who goes out and builds a country  
 club with his own money and then goes out and sells mem-  
 berships in it, buy or don't, as you please, I have got my  
 club here. And that is, of course, what Mr. Kay did in the  
 case of Indian Springs. Now, these people went out and  
 took money from people for the specific purpose of putting  
 together this country club. This country club isn't some-  
 thing that they developed. This country club is something  
 that they organized the sales campaign with and there was  
 going to be no club unless these people invested their  
 money. The only reason that these people are not share-  
 holders is because they organized the Lakewood Country  
 Club as a non-profit corporation. There is no sense be-  
 laboring the argument. From everything I know  
 3824 about the case and from everything I have been able  
 to discern—I am certainly not a corporate lawyer—  
 they are promoters in every sense of the word.

And one further doctrine that I read in these books is  
 that the promoter's relationship continues, as I understand  
 it, as long as he continues to solicit subscribers. And, fur-  
 thermore, as long as he continues to dominate the activi-  
 ties of the corporation. The promoter steps out and his duty  
 ceases, as I understand the law, at the time when the new

board of directors takes over. They can then step out. But this is of the nature of—I think somebody described it—an agency by anticipation. They owe a fiduciary relationship to these people because they are acting as their agents. They are handling their money; and they continued to handle their money. In fact, they insisted on maintaining dominance over this money and over the affairs of the club even over the objection of the members, who wanted to take it over from them.

Just to conclude, I think that these gentlemen, Post, Allen and Pickett, had some duty towards these members, whether it was the duty of the common salesman, the fiduciary of a promoter, but they did have some duty. I think it was that of a promoter. And I think that the Court should instruct the jury in one way or another as to just what their duty was towards these people; and in Government's 3825 16 and 17 that is all I have attempted to do.

The Court: Well, in 16 and 17 you are having the Court instruct with respect to their duties as trustees though, aren't you?

Mr. Loewy: That is correct, Your Honor, because that is what I believe they are. I believe they are promoters, and I think the law recognizes that promoters are fiduciaries.

The Court: What about the fellow selling those sewing machines to those old ladies? He had no fiduciary relationship, did he?

Mr. Loewy: Certainly not. He had the duty of the marketplace. But these people don't. That salesman sells sewing machines and he delivers the sewing machines and if it is a fraudulent sale it is a fraudulent sale. These men went beyond that. These men took the money, held the money and handled the money. It is something much more complicated than just delivering some property which they had sold.

The Court: Mr. Bergan, suppose the Lakewood Country Club, Incorporated, had been a stock company instead of a membership corporation, what relationship would you

conceive the defendants having towards the corporation then?

Mr. Bergan: I think it would have been a vastly different situation then, and I am not so sure I would be standing here arguing that they werent' promoters  
3826 in the corporate legal sense, garbed with all of the rights and liabilities of promoters. But that is not what we have got here.

The Court: You have got a membership corporation, haven't you?

Mr. Bergan: Yes, sir.

The Court: That is, those who are elected to membership and pay their dues, et cetera, become the body corporate in the corporate sense. They are the members.

Mr. Bergan: We have under the Articles of Incorporation of the Lakewood Country Club a non-stock, non-profit corporation, no part of the net earnings of which can inure to the benefit of any member. It is a classic definition, it seems to me, of a corporation trust company, put it together, a classic definition of a non-stock, non-profit membership corporation.

The Court: And it says that the members of the corporation shall consist of persons hereinafter named as the first board of directors, together with additional—with such additional persons who are admitted to membership and who are approved by the board—Now, if the promoters owe a fiduciary relationship, the obligations of a fiduciary, to a stock company, why don't they owe, likewise, a fiduciary obligation to a membership corporation that they bring into existence and promote or develop?

3827 Mr. Bergan: I think primarily, Your Honor, because in a stock corporation they are selling in exchange for the money which they are taking during the pre-incorporation phase, they are selling ownership rights in that corporation. And it is very clear, from the testimony here, that that was not the case with the Lakewood Club. It is clear from the Articles, and it is clear from the testi-

mony of Mr. Loewy's own witnesses, as I recall. They all knew they weren't buying it. As I said before—it may be an oversimplification—they were buying it, and these people were selling, a right to play golf on a given piece of property under circumstances as represented.

The Court: What about the dissolution of the club? Now, not because of financial strait. Let's say they must dissolve the club because the property is too valuable now for subdivision purposes. So they subdivide it and sell it at a terrific profit. To whom does that profit go?

Mr. Bergan: Under the contracts it goes to Lakewood Management Corporation. Under the various contracts involved here, the Country Club Corporation itself could never have a profit.

The Court: I am afraid we are begging the question on this right now. Suppose there had not been any management corporation. Suppose it was just a plain membership company and it was concluded the land was too valuable to play golf on and it was subdivided. And the members said, well, we will move out of here and join other clubs, let's dissolve. Who gets the profit from the sale?

Mr. Bergan: Well, of course, it depends on who owns the land at that point. And under this particular setup PAP, Incorporated, would own the land.

The Court: But there is a leasehold that has to be bought.

Mr. Bergan: There is a leasehold interest which would have to be bought out, presumably, but the land ownership in this case would have been in PAP, Incorporated.

The Court: Let's forget PAP, Developers, Inc., Management Corporation and just take a membership corporation that owns the golf course. The land becomes so valuable that you can't afford to play golf on it anymore and you subdivide it at a big profit. Don't the members have an equitable interest in that?

Mr. Bergan: I think under those circumstances, certainly, but then we are into a stock case and we are sell-

ing stock in a profit corporation then and not a non-profit corporation. At that point we are in trouble with the Montgomery Liquor Control Board.

The Court: Oh, no, I think, for instance, Chevy Chase Club and Columbia Club are membership corporations, and if one of those are sold the golfing members would divide the pot.

Mr. Bergan: I must say I don't know the answer to that, Your Honor. But if the ownership of the underlying land in question was in the Lakewood Country Club, Incorporated, the membership corporation, it seems to me that we would have a vastly different situation then we have here; and that is not what we have here.

The Court: I don't know. I don't know that you don't have that here.

Mr. Bergan: I am reminded that the Kenwood Country Club—

The Court: Oh, that is Chamberlin's or Kennedy's or somebody.

Mr. Bergan: Yes, And he owns the whole thing.

The Court: But that is not true and Chevy Chase, that is not true at Columbia and that is not true at Lakewood. Chamberlin or Kennedy or somebody owns that.

Mr. Bergan: It is true at Lakewood. Somebody owns that land other than the club is the point I make. Simmons owns it at least at this stage.

The Court: That is right.

Well, I guess I am actually thinking of Mr. Kay's operation rather than Kenwood. Well, either Kennedy or Chamberlin, whichever one it was, owned the land and started the club and the members were elected, something like that. I think in Kay's operation that Kay owns the land, put up the club, runs the club and takes the profit. Is that correct?

Mr. Bergan: At Kenwood?

The Court: I think Indian Springs.

Mr. Bergan: Yes, that is my understanding of generally the way it works.

Mr. Dyson: Excuse me a moment, Your Honor. Can Mr. Pickett be excused from the courtroom briefly?

The Court: Surely.

The Court: On Government's 15, I am denying that. See the charge. You will have to show that there was really any loss suffered by the victims.

Mr. Loewy: You have stated that, Your Honor.

The Court: Did I? I am getting mixed up here again.

Mr. Loewy: Your Honor, I made a note when you read your charge that you had not stated the other side of it, that it is also not necessary for the Government to establish any gain to the defendants. It is usually given together. I just noticed when Your Honor read his that you said it wasn't necessary to establish any loss. I wonder if Your Honor would consider adding the second half?

The Court: Have you any views on that, Mr. Bergan or Mr. Dyson? I have got one out of place now. I want 3831 to get rid of it right now. Mr. Loewy said that in the charge I have given it says it is not necessary to a finding of guilt that the victims were damaged or suffered any loss. He said that also ought to be in there: Nor is it necessary for the Government to establish there was any gain to the defendants. That was 15.

Mr. Bergan: I don't have any objection.

The Court: All right, I will put that in.

I don't know how I misplaced these. Your 19, Mr. Loewy, did I act on that one?

Mr. Loewy: No, Your Honor.

The Court: Well, I am denying it.

So really what we are tussling here with is—Oh, 18. I am denying that. That is the good faith defense. I am denying that.

Now, Mr. Bergan, let's go back to your number 26. It seems to me the first paragraph of your 26 and Mr. Loewy's at least 14 are directed to the same thing, omissions rather than full representations. Isn't that right?

Mr. Bergan: I think that is essentially correct; yes, sir. And I think from there we go on and possibly get into too much detail with respect to the facts of the case.

Mr. Loewy: Mine doesn't refer to the facts of the case, Your Honor.

3832 The Court: What is that?

Mr. Loewy: Mine doesn't refer to the facts in the case.

The Court: I understand that.

You have one here, Mr. Loewy, about intentional conversion of trust funds. That is your 16. Mr. Bergan has his 28. Mr. Bergan excused the taking of the property of another if done in good faith. That he has the right to take that property. Mr. Bergan, what property are you talking about right there?

Mr. Bergan: The thing I specifically had in mind in this situation was the 30% compensation contract. That is what this one is specifically directed at. I am not going to argue 28 very strongly here.

The Court: I see. It seems to me that you are getting yourself into a position where you are in a sense objecting to your own position.

Mr. Bergan: I think it is very, very close.

The Court: Because, as I understand, the position you take considering Lakewood Country Club is that these defendants are not promoters because the members who were sold memberships in the club actually have no corporate type of a relationship and, therefore, this fiduciary relationship isn't with these promoters. The promoters

3833 opened up this thing and it was their money, actually, they were putting in, in the sense they were developing this, and the membership got the privilege of playing on their ground, etc., for so much money. Therefore, there was no fiduciary relationship. And then you come to your 28 and you speak about a person takes the property of another. If that membership dues or initiation fee becomes the property of what you call the developers and what



Mr. Loewy calls the promoters, then they couldn't be taking the property of anyone else. It is their own property.

Mr. Bergan: I am disposed to withdraw 28.

The Court: Well, you had better not yet. It might favor Mr. Loewy. You had better leave it there. I am going to look at this tonight, gentlemen. I will look up some more law on these two because I think there is a crucial question here as to exactly what the relationship of these defendants was, whether they were promoters or developers. If they were promoters I am satisfied that Mr. Loewy's 16 should be granted.

And also, let's take a look at 17 again.

Mr. Loewy, why wasn't the paragraph of 17 applicable whether they were fiduciary in relationship to the members or not?

Mr. Loewy: My view, Your Honor, is that it would be whether they were or not. But, as you heard a few moments ago, Mr. Bergan argues that they didn't have any duty to disclose a lot of things. I certainly think they  
3834 have a duty to tell openly and fairly. My interpretation of openly and fairly is that they must disclose all material facts.

The Court: Aren't we actually trying to tell the jury here what they have got to do, what it is their function to decide? In other words, we define for them what a misrepresentation of fact is, what a false statement is, what a false pretense is, and then don't you marshal your evidence to show that this particular evidence falls within the line of being false pretense, false representation and false promises?

And, on the other hand, Mr. Bergan makes his argument, and Mr. Dyson, that the evidence does not show any such thing. Isn't that the essence of this?

Mr. Loewy: Your Honor, I think not. I think that certain people, certain individuals, by virtue of their positions, are, indeed, held to a higher standard than some others. I have cited the Painter Case.



The Court: I am not talking about the first paragraph. I am talking about the second paragraph. You said Mr. Bergan had a different approach. I am going to resolve this matter of fiduciary relationship in chambers. But what I am talking about is the second paragraph of your 17. Isn't it just as applicable as if you found Post, Allen and Pickett had no fiduciary relationship or that they had one?

Mr. Loewy: Without reference to the fiduciary, 3835 Your Honor, I think that the jury requires some guidance as to what the criminal law requires of a person in this situation. I think they need some guidance about when the defendant goes beyond what he may do without exhibiting an intent to defraud. As I say, Your Honor, this second paragraph would be part of a definition of one of those vague terms, a false pretense, a false promise, a misrepresentation.

The Court: My charge defines false pretense, false representation and false promise. It seems to me, you can argue from that. I am not going to so slant the instruction one way or another so that it looks like it is spelling out for one side or the other. I will take this under consideration.

Mr. Loewy: Your Honor, 16 and 17 are based upon cases which say that once you find there is a fiduciary relationship then you apply the standard which has been developed in civil cases; and then I think the duty is defined. This is why I put the duty.

The Court: I am aware of that. I have read these cases.

Mr. Loewy: This is as far as I go with it, Your Honor. I don't mean to have it out of balance.

The Court: I will take a look at these. I had better take a look at the rest of this charge.

• • • • •

3868 Now, Mr. Bergan, let's go to the Government's requested instructions, 16 and 17. Well, wait a minute; let me speak one second here to Mr. Loewy.

Mr. Loewy, one problem I am having with your 16 and 17, you don't leave much for the jury here to do in

3869 this case. You just tell them right off that they are promoters. Isn't it something to be found by the jury as a fact, once they are told what promoters are?—"if you find from the evidence that"—first having been told what promoters are?

Mr. Loewy. I would certainly be content with that. Of course, I haven't furnished Your Honor with any definition of a promoter.

The Court. I am going to furnish you one.

Mr. Loewy. Fine. I'm content with any instructions Your Honor—

The Court. I'll furnish you with a definition of a promoter. But the point is, I don't see how I can sit here and find as a fact that they are promoters, and then tell the jury what their obligation was as promoters. It seems to me that first the jury has to be told, as a matter of law, what constitutes a promoter—"And if you find from the evidence that these defendants are promoters, then certain obligations are imposed upon them." Do you take exception to that?

Mr. Loewy. No, not at all. I think that is eminently fair, Your Honor.

The Court. Now, Mr. Bergan, as I understand, as I reviewed some of this evidence last night, in 1958 Post, Allen and Pickett, at that time being in the District of Columbia engaged in other business, and having been—

3870 or at least some of them having been—with the Sam Snead golfing school, so that they got themselves acquainted with golfing, felt that there was a need for another golf club here in town, and they began looking around. And at the same time they either acquainted themselves or reacquainted themselves with two men in Houston by the name of Freeland and Hayes, and two men in Dallas by the name of Thompson and somebody else. And they discussed with these four men, though not together, how you go about setting up a golf club, a country club deal, with which these men in Houston and Dallas had had some background of experience.

Having therefore informed themselves with respect to that, they then returned to the District of Columbia. And I may be wrong as to which came before what; but it was in that general picture. They looked around. They looked in Virginia and found it was no place for a country club, because of the liquor laws, if nothing else. They looked around in northwest Washington and out in Montgomery County, and concluded that Montgomery County or the Rockville area would be a place that looked like it had possibilities for developing a country club.

They then entered into an advisory contract, I believe it was called, with Freeland and Hayes, to seek their assistance and help in setting up this thing. Freeland, I think, was up here.

3871 They then negotiated with various people about leases, and finally worked out a lease with Mr. Simmons. Shortly thereafter they organized several corporations, one of which was the Lakewood Country Club, Incorporated, the others being PAP, Inc., Country Club Developers, Incorporated, and Lakewood Country Club Management Corporation, all of which were to play particular functions in this arrangement for this country club.

They then in July—well, before that, Freeland was up here and they collected a sales staff and had sales meetings; and Freeland gave the sales staff the benefit of his knowledge on how you go out and promote memberships and sell memberships.

They then undertook a sales campaign, beginning in July, as advertised in the Post and the Star, and the promotion was selling memberships in the Lakewood Country Club, Incorporated. The articles of incorporation of the Lakewood Country Club, Incorporated say that the members of the club are the members of the corporation; but it's a nonprofit, membership-type corporation.

This corporation, as I say, was organized by the defendants. Mr. Post's testimony was that they went down to CTC; and Peables, I think, was the man down there who

did the work for them. They even sent him a set of  
3872 by-laws from Casa Grande or Casa View, some other club.

They then had a meeting at the Mayflower and they selected three directors, a president, vice president and secretary-treasurer, I guess. And then the sales campaign started. They then went ahead and brought in these members and sold life memberships. And the rest of it we don't need to go into for the purpose of this.

Now let me read to you what Dickerman states about promoters: A promoter is one who brings together the persons who become associated in the enterprise, aids in procuring subscriptions, and sets in motion the machinery which leads to the formation of the corporation itself. Or, as defined by the English statutes, every person acting, by whatever name, in the forming and the establishment of a company, at any period prior to the company's becoming fully incorporated, he is treated as standing in a confidential relation to the proposed company and bound to exercise the utmost good faith.

The promoter is the agent of the corporation, subject to the disabilities of an ordinary agent. His acts are scrutinized carefully, to preclude him from taking advantage of the other stockholders.

Accordingly it has been held—and this is Cook on Stocks—accordingly it has been held that the person who starts a company, and induces others to subscribe  
3873 for shares—and of course this is not a stock company, this is a membership company. But, transposing, inducing others to subscribe for memberships, for the purpose of selling property to the company when organizing it, he must faithfully disclose all facts relating to the property which would influence those who form the company in deciding upon the judiciousness of the purchase. If the promoters are guilty of any misrepresentation as to the facts, or suppression of the truth in relation to character and value of the property, or their personal interest

in the proposed sale, the company would be entitled to set aside the transaction and to recover compensation for any losses suffered.

Now, Mr. Bergan, why couldn't these defendants be found to be promoters, under the evidence in this case?

Mr. Bergan. Well I think primarily, Your Honor, because the concept of "promoter," as I understand it—and I'm like Mr. Loewy said yesterday. I don't purport to know a great deal about corporation law. But the concept of "promoter," as I understand it, in the field of corporate law, is that of a person who puts together a stock corporation, in which he later sells shares to investors—not a person who puts together an organization and then sells what amounts to goods and services, which is what I suggest we have here. These people are not investors in 3874 the Lakewood Country Club. None of the so-called victim witnesses, not one, has testified that they thought they were getting any ownership interest in the Lakewood Country Club. And I think this kind of thing differentiates this situation completely from the promotion of a stock corporation, where the promoters, in the classic, legal, commonlaw sense, have a fiduciary obligation to the subsequent investors. In this case we don't have any subsequent investors. They are not investors in the stock, corporate sense. These are persons who are paying X number of dollars, whether it be \$340 for a regular membership, for the right to pay dues every month to play at this golf course, or people who pay a thousand dollars, up to thirteen hundred and some odd dollars, for a life membership, for the right to play golf here without any dues.

I think that is the situation which sets this wholly aside from the concept of promoter in the commonlaw sense, as applies to a person who puts together a stock corporation for investment purposes.

The Court. Your point is, then, that there couldn't be any promoter with respect to any membership, nonprofit corporation?

Mr. Bergan. That's about what it comes down to, yes, sir. And I don't think the evidence in this case permits of an instruction of a type patterned on the Dicker-3875 man definition of promoter.

Mr. Dyson. May I ad briefly to that, Your Honor?

The Court. Surely.

Mr. Dyson. I think the distinction is even more apparent when you realize the reason for the imposition of the fiduciary relationship on a promoter, as that word is usually used in corporate practice. There are two reasons, as I understand it, for imposing the fiduciary relationship on a promoter in a stock corporation—one, that by the uniqueness of his position he has the control of the funds, and they put that duty on him so that in no way will he—I will use the word—dissipate the funds of these investors. The investors are putting money in with a view to obtaining a profit at a later time, either through a dividend or, upon the sale of their stock, a capital gain. That is the rationale for the fiduciary relationship as it applies to the promoter—and the only reason, as I understand the law. And that is simply not the case here. The people who gave money for memberships in Lakewood Country Club did not do so expecting a monetary return on their money. They weren't investors in that sense. They invested their money for one reason, to obtain the facilities which these promoters—maybe I shouldn't use that word.

The Court. I don't think you mean to.

3876 Mr. Dyson. —which these developers had told them they were going to have. So you can't impose a fiduciary obligation in the sense that—I'm going to say—Mr. Loewy is trying to extend this promoter concept, because that's simply not the law.

The Court. Let me understand, Mr. Dyson. Your position is this: Unless a promoter is attempting to sell something that is in the nature of an investment on which the buyer is expecting to get some return, there can't be any promo-

tion. But what about a man who wants to buy the benefits that a membership would give him?

Mr. Dyson. I don't say it quite that narrowly, Your Honor. I don't say there can't be a promotion. This was a promotion. There's no question about that. The basis of my position is that Mr. Loewy is trying to take the corporate area of law dealing with promoters, as it has developed over the years, and the ensuing fiduciary that they have to subsequent investors, and apply it to this situation. And to my way of thinking it's apples and oranges. There are no investors in the Lakewood situation, which is the predicate in the corporate law of imposing the fiduciary obligation.

The Court. There was an investment, certainly, of \$1,002 by the early life members, and \$1,350 by the 3877 subsequent life members.

Mr. Dyson. Yes.

The Court. And for one purpose, and that was to buy a membership in the Lakewood Country Club, Incorporated, which makes them members of the corporation.

Mr. Dyson. And all these boys had to do was supply the physical facilities. They did not have to carefully manage and invest the money for these people who contributed the money, so that the corporation would show a profit. That was obviously not the concept in any manner. And, going back to what I'm saying, that is the bedrock of the rule of fiduciary obligation. The promoter must manage those funds in such a manner, in good faith, that the investor will receive at some time a profit, a monetary profit. Your Honor, I submit that the law in that area is clear.

The Court. Is there anything else?

Mr. Dyson. That is all I have, Your Honor.

The Court. I am going to grant in substance the Government's requested charge 16 and 17. I say "in substance" because I am going to have to change it, in the sense that I am not going to make a finding that these people are promoters. My instruction, gentlemen, in essence will be this:



I will define what a promoter is, at law. I will then instruct the jury, "If you find from the evidence that  
 3878 the defendants were promoters, during this critical period from 1958 until the time they lost control of the corporation, March 31, 1961, then you are instructed that"—and I shall then set forth what the obligations of promoters are, as set forth here in 16 and 17 of the Government's requested instructions. I do not have it written up at this time.

Does that satisfy you, Mr. Loewy, to know what I am going to charge?

Mr. Loewy. Yes, Your Honor, completely.

The Court. Does it satisfy you, Mr. Bergan? Not that you want the charge, but in the way I am stating what it is? I do not have it at this moment written up.

Mr. Bergan. You ask me whether I am satisfied, in the sense that I undersand what you are going to do?

The Court. That is what I mean, yes.

Mr. Bergan. Yes, I understand what you're going to do.

The Court. And you take no objection to my doing it without having it written up now? You object to the charge itself.

Mr. Bergan. No, I don't have any objection to the procedure—no indeed.

The Court. And the same thing, Mr. Dyson?

Mr. Dyson. I take the same position, Your Honor.

• • • • •  
 3917 Now, in connection, ladies and gentlemen, with  
 expenditures, I just briefly want to go into some of  
 3918 the things that Lakewood money was paid for. And  
 when I say it was paid for I would like to suggest  
 to you there is another aspect to this, because not only  
 did they spend a certain amount of Lakewood money for  
 a certain amount of things, but they left a certain amount  
 of bills unpaid when they left. And, who do you think was  
 stuck with those bills? Now, for instance, as I said, Mr.  
 Feiss was paid only \$2,500.00. Somebody had to pay Mr.



Feiss \$13,500.00. And Mr. Hooper filed a mechanic's lien. I believe he testified and, if he did not, the books and records will show that these gentlemen left Mr. Hooper owed \$60,000.00. Not \$60,000.00 for completing the clubhouse, that is \$60,000.00 for what work he had done and had not been paid for.

If you want to take the figure for completing the clubhouse you can take a figure of about \$266,000.00, which is the difference between what Mr. Hooper was paid and the contract price, or else you can take another figure, which it ultimately cost to finish that clubhouse, with certain additions added on later.

You may recall Mr. Cox, remember Mr. Cox, a very impressive furniture man from Texas, he testified that in buying Mr. Allen's furniture they left him stuck for \$1,500.00. And I think I have got his ledger card in here somewhere that will show that. That is \$1,500.00 for furniture in Mr. Allen's apartment.

3919 And, finally, I believe Mr. Elder testified. Do you remember him, the turf agronomist for the Carroll Company? As I recall his testimony, and as I recall the books, he said they left owing him about \$6,000.00 from the combination of the golf course and that septic pool which he built out in the woods there.

So this is about \$80,000.00 in debts that they left to contractors alone. I would like you to remember that when I start talking about what they spent in addition because this money, I think, it doesn't take much stretching to show it can be added onto what they took.

First of all, we have testimony from many people. They took in a million and one-half dollars. This, I think, is uncontroverted, a million and one-half dollars. Of course, \$250,000.00 of that was taken in for excise tax, and the testimony of Mr. Brimmer and, I think, from the books was that only about \$80,000.00 or \$85,000.00 of that was paid to the Government. The rest of it was neither returned to the members nor was it paid to the Government. Mr. Post, I believe, contends that he spent that for con-

struction or something, or that he was advised to spend it for construction. That is only a small part of the money. I submit you may consider what he did with it and why he did what he did with it. But it is only a small part of this million and one-half dollars.

3920 Now, the amount spent for construction. You may remember my colloquy with Mr. Pickett about trying to get him to add up how much these contracts cost, and he wouldn't do it. But, I submit, ladies and gentlemen, that if you put the amount paid to Mr. Hooper, the amount paid to Mr. Feiss and the amount paid to everybody else who did work—and I mean the people who built the walls and the people who dug the holes, I mean the people who did the excavation, and I mean contractors whose names you haven't even heard in here—the whole business comes to about \$600,000.00, ladies and gentlemen; \$600,000.00 out of \$1,500,000.00 was spent for construction of the facilities at Lakewood; all of the facilities; that is all that was spent for construction. Is it any wonder that they didn't finish?

How many of you ladies, if you go shopping for groceries, would come home with enough to feed the family if you spent about 70% of the money for something other than groceries? You can't do it. That is why they didn't finish, because they didn't spend enough of the money they took in for what they were supposed to spend it on.

Now, you may doubt my figures. We have an exhibit here which contains a figure. It is Mr. Allen's figure. And I think we have evidence here that Mr. Allen, on occasion, is prone to exaggerate, so, I submit, it may be an outside figure, but even it I would be willing to accept if

3921 you ladies and gentlemen would accept it.

Mr. Allen, in Government's 171, a letter to Mr. Dixon trying to sell the Lakewood Country Club interests which they hold, he says to Mr. Dixon, in paragraph 4, "to date there has been expended at the club some \$650,000.00 for facilities and there is some \$300,000.00 to be paid to complete the clubhouse." Late in November, 1960. If

you don't like my figures, I submit, take Mr. Allen's. I submit, this is an outside figure.

Under no stretch of the imagination or no interpretation of the books have these gentlemen been found to spend more than \$650,000.00 out of that million and one-half they took in for constructing the facilities. That is why they didn't finish, not because of bad weather, tax troubles or dissident membership. They didn't finish because they spent the money somewhere else. It is a big problem, ladies and gentlemen, trying to spend in too many places.

Now, I have introduced another set of charts in evidence. That was Government's 183. And you may take this into the jury room with you if you think it would help top chart, ladies and gentlemen, which is the summary. you. I won't turn to these other pages, I will just take the If you don't believe the summary, I submit, you can check the figures back here. Of course, as His Honor will in-

struct you, you can throw the whole chart out too, if  
3922 you don't believe it. Mr. Brimmer testified to these figures. I submit, they are all in the books. If any of you are accountants, I think you will find the exact figures there. But, in any event, from the best computations that we are able to do, ladies and gentlemen, we find Mr. Post, Mr. Allen and Mr. Pickett getting \$203,000.00 in cash. We find them sending a net of \$93,000.00 and some dollars to their other clubs. When I say their other clubs, I mean Golf Contractors, Inc., I mean the Extensio Hanger Company, I mean the Eden Roc Country Club, I mean the Quidnessett Country Club, I mean the Pioneer Point Associates on the Eastern Shore and the Shore Club Estates, of which Mr. Pickett was President. Those are the companies. That, ladies and gentlemen, is a net figure. That takes into consideration every dime that came back from those other corporations; \$93,000.00 is net.

Then we have \$98,000.00 plus going to Mr. Freeland and Mr. Hayes for advice which was disregarded.

We have \$83,000.00 going for advertising and sales promotion.

We have \$74,000.00 going in salesmen's commissions to other salesmen.

On Chart 4 I will give you a short breakdown here. We have \$12,839.00 going for automobile expenses—automobile expenses \$12,000.00. Telephone expenses \$12,000.00 Travel expenses \$7,000.00. And then we have the furniture 3923 going to Mr. Allen's apartment, which is \$6,500.00

You put all those figures together, ladies and gentlemen, and you have got \$593,000.00 spent for those items.

I submit, ladies and gentlemen, in view of the fact that they only spent about \$600,000.00 for constructing the facilities at Lakewood—I submit, in the light of that—this figure is almost \$600,000.00. It is excessive, it is unreasonable and it cannot be justified in any way; simply too much money to take.

• • • • •

3927 Mr. Bergan: Your Honor, within the last five minutes of Mr. Loewy's argument, he made a statement regarding Government's Exhibit 183, which is one of his charts, relating to the money that went to allied clubs, allied organizations, that the figure reflected on the chart of \$93,000.00 some odd dollars was a net figure, and his language was that it takes into consideration every dime that came back.

In view of the Court's ruling, which precluded me from showing an additional \$88,000.00 coming back from one of those clubs, I think that argument is improper because it doesn't take into consideration every dime that came back. It takes into consideration every dime that came back as of the date Mr. Loewy's accountant prepared those charts. And I think it gives a totally misleading impression and I move for a mistrial on the basis of it.

The Court: You are speaking, sir, of the money that came back after the conservatorship?

Mr. Bergan: Yes, sir, I am indeed.

The Court: The motion is denied.

Mr. Dyson: I should like to join in that motion, Your Honor.

3928 The Court: The motion is denied.

• • • • •

4085 The jury are instructed that a promoter is a person who sets in motion machinery that brings about the incorporation and organization of a corporation, brings together the persons interested in the enterprise to be conducted by the corporation, aids in inducing persons to become members of the corporation, and in procuring from them membership fees to carry out purposes set forth in the corporation's articles of incorporation.

4086 If from the evidence in this case the jury should find beyond a reasonable doubt that the defendants were promoters of Lakewood Country Club, Inc., then you are instructed that the defendants stood in a fiduciary relation to both the corporation as a separate legal entity and the members, including those persons who it was to be anticipated would make application to and would become members in Lakewood Country Club, Inc. Such a fiduciary relationship on the part of the defendants, should you find them to be the promoters of the Lakewood Country Club, Inc., required that they exercise the utmost good faith in their relations with the corporation and the members, including fully advising the corporation and members, and persons who it was to be anticipated would become members, of any interest which the defendants had that would in any way affect the corporation, the members and anticipated members. Such a full disclosure requirement, if you should find the defendants to be the promoters, would obligate them to faithfully make known all facts which might have influenced prospective members in deciding whether or not to purchase memberships. And this full disclosure would include the duty to refrain from misrepresenting any material facts, as well as the duty to make known any personal interest the defendants had in any transaction relating to the country club enterprise.

Also you are instructed that if you should find  
 4087 beyond a reasonable doubt that the defendants were  
 promoters of the Lakewood Country Club, Inc., and  
 that the funds obtained by them from members of the club  
 corporation to accomplish the purposes of the corporation  
 were used by them for the club's benefit, they were prop-  
 erly used. On the other hand, if you should find beyond a  
 reasonable doubt that the defendants were the promoters  
 of the club corporation, and that they had intentionally  
 converted those funds to their own personal use, such would  
 be a fraud on the members of the club corporation, since  
 such funds were in the nature of trust funds as to which  
 the defendants had a fiduciary obligation. And in that  
 connection you are further instructed that for promoters  
 to knowingly use their fiduciary position to obtain secret  
 profits at the expense of the corporation or its members  
 would not only be a breach of that fiduciary duty but an  
 act of fraud.

• • • • •  
 4104 The exhibits, as soon as they can be gotten to-  
 gether, will be sent in to you. There will be given to  
 you at this time a copy of the indictment and the form of  
 verdict.

(Accordingly at 12:14 p.m. the jury retired to consider  
 of its verdict.)

• • • • •  
 4108 The Court. Ladies and gentlemen of the jury, I am  
 going to let you go home now until tomorrow. Mrs.  
 Wilson, one of your members, has to go to a funeral to-  
 morrow. There has been a death in her family. She can-  
 not resume until after noon. So come back at one o'clock,  
 and go immediately to the jury room and then resume your  
 deliberations. Come, though, and have had your lunch  
 before you come, and save that much time—and probably  
 save the government some money, too. In any event, if  
 you will come at that time.

Now the exhibits can be left in there—and who is the foreman, please?

The Foreman. I am.

4109 The Court. Mr. Foreman, the exhibits can be left in there; but if you have any notes in there, notes made by the jury, you will be given an envelope here by the Clerk, and put all the written material—notes, I am speaking of now—in the envelope, seal it and give it to the Clerk, and he will turn it over to you again tomorrow at one o'clock.

The Foreman. All right, sir.

The Court. The exhibits, however, will be left there and the door will be locked. They will be as safe there as they would be if they were locked up in some other room.

Therefore, I am now going to let you go until one o'clock tomorrow afternoon. But you will bear in mind, ladies and gentlemen of the jury, that you are not permitted to speak to anyone, and no other person will speak to you; and you may not even speak among yourselves except when you are in that jury room actually deliberating. In other words, going home tonight, if two of you are leaving the building together, you may not speak about this case. Of course, you will not read about it, and you will not listen over the radio or watch it on TV, should either of those media carry it. So come back, then, tomorrow afternoon at one o'clock and resume your deliberations.

(Accordingly at 5:18 p.m. the adjournment was taken, the adjournment of the Court being until ten o'clock tomorrow morning, Friday, June 17, 1966.)

• • • • •



4110 Before the Honorable WILLIAM B. JONES, United States District Judge, the jury, pursuant to yesterday's adjournment, having returned and resumed their deliberations at one o'clock this afternoon.

Appearances:

In behalf of the United States:

Mr. EDWARD BARNES

Mr. MARVIN LOEWY

In behalf of defendants POST and ALLEN:

Mr. RAYMOND W. BERGAN

In behalf of the defendant PICKETT:

Mr. THOMAS R. DYSON, JR.

4111 —PROCEEDINGS—

(At 2:35 p.m., the jury not being in the courtroom:)

The Court. In the case of United States versus Post, Allen and Pickett, I received a note from the jury perhaps 45 minutes ago, at which time I asked the Clerk to call counsel down. The note says:

"Your Honor, may we have six additional copies of the Grand Jury indictment?

"Frank E. Howard, Foreman."

Mr. Bergan.

Mr. Bergan. Your Honor, I objected to it two days ago when it first came up, and I must continue to restate my objection to it. I think one copy of the indictment is enough.

The Court. Mr. Dyson.

Mr. Dyson. I take the same position, Your Honor.

The Court. Mr. Loewy.

Mr. Loewy. I don't agree that more copies is cumulative damage. I think it is a matter of expedition and convenience, and I think they ought to have them.

The Court. Have you got six more copies?



Mr. Bergan. I question whether we have six new copies.

4112 Mr. Loewy. No, I don't have six new ones, Your Honor.

The Court. How many have you got?

Mr. Loewy. I think what I have, Your Honor, I do have, I can give as many as you want of uninterrupted copies of the conspiracy count.

The Court. Well no, you can't do that. You have to give the whole thing, or nothing, because they are not asking for one count.

Mr. Loewy. I certainly have one right with me. And Mr. Bergan probably has one right with him.

Mr. Bergan. No, I don't. And I'll tell you what. We made an original and two Xerox copies, one for Mr. Loewy and one for myself. The jury has the original, Mr. Loewy may have his, and I don't have mine.

The Court. You made an original and two, so you wouldn't have six to send in.

Mr. Bergan. Do I have to answer?

The Court. I had better reply to them and tell them we do not have six copies.

Mr. Loewy. I can get them, Your Honor, if you are having a mechanical problem.

The Court. I think we are not going to be trying that this afternoon. I will write this note: "We do not have six copies." It will just take longer, gentlemen.

4113 Mr. Bergan. Your Honor, the thought has been expressed to me that if you answer this by saying "we do not have six additional copies," you may get another note in five minutes saying, "Can we have two or three?" Perhaps maybe if you would just tell them that we have no additional copies available, that might resolve that.

The Court. You mean you have no copies available. Mr. Loewy has some copies available.

I am simply saying this: "Mr. Foreman: There are not six additional copies of the indictment."

I assume there is not much reason for your sitting around here, gentlemen. There is only one copy for the 12 jurors to read. So I think it will be safe for you to go back to your offices. But do as you please about it. As far as I am concerned, you can go to your offices.

(Accordingly, at 2:40 p.m., counsel were excused subject to call.)

4114 (At 5:01 p.m., all counsel present, the defendants not in the courtroom, the jury not in the courtroom, the following proceedings were had:)

The Court. Gentlemen, we have heard nothing further from the jury. It is five o'clock, and I am going to let them go home until Monday morning. The defendants waive being here, I assume?

Mr. Bergan. Oh yes, surely, Your Honor.

The Court. It isn't necessary for them to be here; but I wanted to make sure.

Bring the jury in.

(The jury is now in the box.)

The Court. Mr. Foreman and ladies and gentlemen of the jury, I assume that you are not ready for any verdicts, and therefore there is no reason for your staying any longer this afternoon. Is that correct, Mr. Foreman?

The Foreman. That is correct, Your Honor.

The Court. So I am going to excuse you, then, until Monday morning. Would you prefer 10 o'clock, or would you sooner come a little bit earlier on Monday morning? What is the view of the jury? How many would like to come before ten? I want you to raise your hands. (There were several hands.)

Would it inconvenience others if they did come earlier?

(No response.) Would it inconvenience you? (There  
4115 was a negative response.)

Why don't you come in around, say 9:15. Would that be too early? (No response.) Nine-thirty? What do you think, Mr. Foreman?

The Foreman. I think between 9:15 and 9:30.

The Court. Suppose you come in between 9:15 and 9:30 and resume your deliberations.

Do you have some notes around, as you did last night? If so, you'll pick them up and seal them.

The Foreman. We have everything scattered.

The Court. Well, I am speaking about your own material, rather than exhibits. I think, Mr. Foreman, you had better pick them up and put them in an envelope and give them to the Clerk. The exhibits themselves will stay there. But any notations or anything like that, give them to the Clerk, sealed in an envelope he will give you; and he will have it for you Monday morning. And let's make it 9:15, then, Monday morning.

And, ladies and gentlemen of the jury, you will bear in mind the admonition, of course. You will not speak to anyone, nobody will speak to you, and you may not even speak among yourselves about this case until you resume your deliberations in that jury room Monday morning. It is only while you are in the jury room you may speak among yourselves. And of course you won't read  
4116 about the case, nor will you listen over the radio or watch it on TV, in the event either of the media carries it.

All right. You will return at 9:15 Monday morning and resume your deliberations.

(Accordingly at 5:05 p.m. the adjournment was taken until 10 o'clock Monday morning, June 20, 1966, the jury to return and resume their deliberations at 9:15 Monday morning, June 20, 1966.)

4117 Before the Honorable WILLIAM B. JONES, United States District Judge, the jury, pursuant to Friday's adjournment, having returned and resumed their deliberations at 9:15 this morning.

Appearances:

In behalf of the United States:

Mr. EDWARD BARNES

Mr. MARVIN LOEWY

In behalf of defendants Post and ALLEN:

Mr. RAYMOND W. BERGAN

In behalf of the defendant PICKETT:

Mr. THOMAS R. DYSON, JR.

4118 —PROCEEDINGS—

(At 11:10 a.m., all counsel and defendants being present, the jury not in the courtroom, the following proceedings were had:)

The Court. Gentlemen, I have a note here that came to me, oh, about a half an hour ago from the jury, which has been deliberating I think since, someone told me, nine-fifteen this morning. The note reads:

"Your Honor: Can you re-read your charge to the jury, omitting those portions where you quoted Counts 1 and 2 of the indictment?"

I gather they mean from A to Z, except for the indictment. I shall ask them, however, when they come in.

Are there any objections?

Mr. Bergan. I am not sure I understand. Oh, you mean omitting the part that you read.

The Court. What they say, again, Mr. Bergan:

"Can you re-read your charge to the jury, omitting those portions where you quoted Counts 1 and 2 of the indictment."

Mr. Bergan. I see.

The Court. I assume what the Foreman is saying here is to re-read the whole charge, "but don't bother reading

the indictment. We've got that with us and we'll know what's in there.

4119 Mr. Bergan. I think that's what it means, Your Honor.

The Court. And I assume also it means what's the function of the jury, what's the function of counsel and what's the function of the Court, and the whole thing.

Mr. Bergan. It sounds like it means the whole thing.

The Court. I think the thing to do is to ask him when they come in here, if they want the whole charge or just those parts of the charge that have to do specifically with the indictment. Do you agree with that?

Mr. Bergan. Yes. I wouldn't have any objection to inquiring about that.

The Court. Mr. Dyson?

Mr. Dyson. I agree with that.

The Court. Counsel for the government?

Mr. Loewy. I agree also, Your Honor.

The Court. I think I will just ask him that.

All right, you can bring in the trial jury in the Post-Allen-Pickett case.

• • • • •  
4123 The Court. Good morning, ladies and gentlemen.

Mr. Foreman, I have your note, reading:

"Your Honor: Can you re-read your charge to the jury, omitting those portions where you quoted Counts 1 and 2 of the indictment?"

Do I understand, then, that you want everything that I read to you on Thursday, other than what I quoted from the indictment? Is that correct?

The Foreman. Yes, sir; that is correct.

The Court. Very well.

• • • • •  
4158 (Accordingly at 12:30 p.m. the jury again retired to consider further of its verdict.)  
• • • • •

4162 The Court. Mr. Foreman, Ladies and Gentlemen,  
I have this note from the Foreman:

"Your Honor: Under Count 1, did you instruct that any conspiracy had to be devised on or about the first day of November 1958 as alleged in the indictment, or could it have been devised any time after that date?"

Signed, Frank E. Heller, Foreman, June 20, 1966.

Now, Ladies and Gentlemen of the Jury, here it is:

In the first place before you can consider any date at all, you would first have to find a conspiracy did exist as defined by me in my charge. If a conspiracy was found to exist, then it must have come into existence not earlier than November 1, 1958, could not have existed later than March 31, 1961. It could have commenced any time after November 1 and terminated any time before March 31, 1961, but it couldn't begin earlier than November 1, it couldn't exist after March 31, 1961. I am speaking of November 1958 and March 31, 1961. Does that go to the question you asked?

The Foreman: Yes, sir.

The Court: Any objection?

Mr. Bergan: No objection.

• • • • •  
4169 (At 5:02 p.m. the following proceedings were had,  
the jury not in the courtroom:)

The Court. Gentlemen, within the last 15 minutes I received this note from the jury:

"Your Honor: We are unable to reach a verdict. Should we so inform the Court?"

"Frank E. Haller, Foreman, June 20, 1966."

Mr. Bergan?

Mr. Bergan. I didn't realize the Court had that note when we came down here. Your Honor, this jury got this case some time in the early afternoon on Thursday. And I'm not going to add up hours, because I don't know really how it can be done.

The Court: They took the case at about 12:15 p.m. on Thursday, June 16th.

Mr. Bergan. And went to some time shortly after five o'clock on Thursday, when they were turned loose.

The Court. They took lunch and they came back around two o'clock and left at five. They were turned loose until one p.m. on Friday 17th, because of a funeral that one of the jurors had to go to.

Mr. Bergan. Right.

The Court. And came in this morning at 9:15.

Mr. Bergan. They had about four hours on Friday, 4170 and have been here since 9:15 this morning, minus lunch and minus the time they were in here for the Court to reread its charge.

I realize this all becomes relative, and there is a matter of judgment involved. But in my judgment to keep this jury any longer, particularly in the light of this message, would be coercive; and accordingly I move for a mistrial and that this jury be discharged as unable to reach a verdict, and that the case be sent back to Assignment Court for re-assignment.

The Court. Mr. Dyson.

Mr. Dyson. I join in that motion, Your Honor.

The Court. Mr. Loewy.

Mr. Loewy. Your Honor, the jury has had the case, think—and I'll try to add the hours—I think it's probably something less than 15 or 14 hours of deliberation. I don't think that is a great deal of time for a case involving eight weeks of testimony.

The Court. It's not eight weeks. It's the better part of seven weeks. It started April 25th, didn't it?

Mr. Loewy. The better part of seven weeks of testimony. And, as it says in the Allen charge, some jury some day is going to have to decide it. I don't think any jury is ever going to get more evidence. And I think they 4171 ought to try it for a couple of more days. I would request that Your Honor give them a charge encouraging a verdict.

The Court. How many exhibits were received in evidence in this case?

The Deputy Clerk. Both sides, Your Honor?

The Court. Both sides, the total number of exhibits received.

The Deputy Clerk (having referred to exhibit lists). Approximately 313. But that is not including all the various checks.

The Court. There are 315 exhibits received in evidence, not including all the individual checks, probably another hundred. So the jury has had about four hundred exhibits which went into the jury room with them at the time they were given the case on June 16 at 12:15 p.m.; and some of them are of some length, some of the contracts. I frankly don't see how they can have had time to read all the exhibits thus far. In addition to which they had three and a half hours of consideration, approximately, on June 16th; four hours on June 17th. Today they have been here since 9:15, and I assume they had about an hour's lunch. It is now 5:10. That would be 14 and a half hours, the total time the jury has had this case under consideration. The case was tried for the better part of seven weeks, and  
4172 they have now had about 14 hours' consideration, with, I would say, 400 or 415 exhibits in there.

I am going to deny the motion for mistrial, and I am going to give the Allen charge. The Allen charge is going to be this, gentlemen, and I might tell you how it came about and why it is in this phrasing. In June of 1964, in the case of Ronald Williams versus the United States, 119 U. S. Appeals D. C. 190, Judge Wright writing the opinion, Judge McGowan concurring and Judge Miller dissenting, the question came up with respect to a purported Allen charge given in that case. There were two or three things involved. One was the foreman of the jury asked if they could send in the two alternates and let the two minority jurors out—which was a tip-off to begin with.

Secondly, Judge Wright made the point that the trial judge, instead of giving the Allen charge, gave his version



of the court's opinion in *Allen versus United States*, 164 U. S. 492. And then Judge Wright referred to the Allen charge as improved by the court in that case, as being the charge in *Commonwealth versus Tuey*, 8 Cushing (Massachusetts) 1, decided in 1851. There are some Fifth Circuit cases cited in Judge Wright's opinion.

I therefore went to *Commonwealth versus Tuey*, and the charge I am about to give has been developed 4173 from the charge specifically approved by the Supreme Court of the United States.

I also gave consideration, of course, to *Allen v. United States*, in 164 U. S. I also gave consideration to *Sikes versus United States*, 279 Federal 2d, Fifth Circuit, 1960; *Green versus United States*, 209 Federal 2d, Fifth Circuit, 1962; and, of course, the case of *Ronald Williams versus the United States*, our Court of Appeals, in 119 U. S. Appeals D. C.

• • • • •

4175 Mr. Bergan, you want to object, of course?

Mr. Bergan. Yes, sir, I do. I think the charge in that form is decidedly coercive. I think the implication is, in that charge, that regardless of what the views of the minority of the jury are, whether they are for acquittal or for conviction, that there is not sufficient evidence in that charge, as the Court proposes to give it, that this is to be an individual, conscientious judgment by each juror. I think this charge, as given, is coercive, and I would object to it.

• • • • •

4177 Mr. Dyson. Your Honor, while we are waiting, may the record simply reflect that I join in Mr. Bergan's objection, both to giving it—

The Court. Both to giving the Allen charge as I propose to give it, and refusing to give the Allen charge as Judge Tenney gave it?

Mr. Dyson. Yes.

• • • • •

4180 The Court. Ladies and gentlemen of the jury, I have the following note from your Foreman:

"Your Honor: We are unable to reach a verdict. Should we so inform the Court?

"Frank E. Haller, Foreman, June 20, 1966."

The answer to that question of course is yes. But before you reach that point I want to give you an additional charge which I want you to consider tomorrow:

The mode provided for deciding questions of fact in criminal cases is by a verdict of the jury. In a large proportion of cases, absolute certainty cannot be attained or expected. Although the verdict to which a juror agrees must of course be his own verdict, the result of his own convictions, and not a mere acquiescence in the conclusion of his fellow jurors; yet in order to bring the minds of 12 jurors to a unanimous result, each juror must examine the question submitted with candor, with a proper regard and deference to the opinions of each other. You should consider that the case must at some time be decided; that you are selected in the same manner and from the same source from which any future jury must be; and there is no reason to suppose that the case will ever be submitted to 12 jurors  
4181 more intelligent, more impartial or more competent to decide it, or that more or clearer evidence will be produced on the one side or the other. With this view, it is your duty to decide the case if you can conscientiously do so.

In conferring together, you ought to pay proper respect to each other's opinions and listen with a disposition to be convinced to each other's arguments. On the one hand, if much the larger number of your panel are for conviction, a dissenting juror should consider whether a doubt in his own mind is a reasonable one, which makes no impression upon the minds of so many jurors equally honest, equally intelligent with himself, and who have heard the same evidence with the same attention and with an equal desire to arrive at the truth and under the sanction of the same oath.

And, on the other hand, if a majority are for acquittal, the minority ought to seriously ask themselves whether they may not reasonably and ought not to doubt the correctness of a judgment which is not concurred in by most of those with whom they are associated, and distrust the weight or sufficiency of that evidence which fails to carry conviction to the minds of their fellow jurors.

Tomorrow morning I want you to come back at 9:15, go back to the jury room and consider this case in the light of these additional observations which I have just given you—9:15 tomorrow morning.

• • • • •

4182 Mr. Bergan. I just wanted to make sure my record is absolutely clear. I object to the fact that an Allen type charge was given, and to the language of this particular charge.

The Court. And Mr. Dyson also.

Mr. Dyson. The same objections.

• • • • •

4239 The Court. I find this to be an extremely difficult case as far as these three defendants are concerned and the charges on which they have been found guilty, being one count of conspiracy and 12 counts of mail fraud. I have taken into consideration the fact that these are relatively young men, that they are married men and that they have families. And of course I have great sympathy for their wives and children. I must also take into consideration, however, that these young men have been given opportunities, and that a lot of people who come before the bar of this Court have not had such good fortune. Mr. Post has a law degree and has been a member of the Bar of this Court, and he has been a member of the Bar in the State of Texas. Mr. Pickett comes from a fine family in Maryland, was enrolled in the Montgomery County Junior College and apparently dropped out after finishing a semester, went into the service, then entered a Virginia school, I believe, and dropped out after one semester. Mr.

Allen, I see, went through high school and apparently did not further continue his education. There 4240 is no indication he could have done so. The indication is to the contrary. But he too has done quite well and has enjoyed the nicer things of life. All three have had somewhat responsible positions, and particularly is this true of Troy V. Post, Jr., whom I consider to be the leader of this group. I am well aware of the fact that he is a member of the Bar of this Court, a man who is sworn to uphold the law and not violate it.

I have taken all of these things into consideration. I had an investigation made with respect to the financial assets of these people, thinking that perhaps some consideration of fines would be justified; but there are no financial assets. Mr. Allen is in debt, Mr. Pickett is in debt, Mr. Post is in debt—although Mr. Post had four automobiles—a Cadillac, an MG and two others. He has an account down in Birmingham with Merrill-Lynch, I believe, but with so much indebtedness against it that we might as well think of him as being without assets.

As I say, all of these things I have taken into consideration, and I think under the circumstances the only proper, just judgment I can render is the following:

I sentence Troy V. Post, Jr., on count 1, the conspiracy count, to not less than 16 months and not more than 48 months. He is to serve six months, the execution 4241 of the remainder of his sentence is suspended and he will be placed on probation for five years. He will serve those six months in a jail-type institution or a treatment institution. On count 2, which is the beginning of the 12 mail fraud counts, I impose the same sentence, to be concurrent with the sentence imposed on count 1; count 3, the same sentence, concurrent with counts 1 and 2; count 4, the same sentence, concurrent with counts 1, 2 and 3; count 6, the same sentence, concurrent with counts 1, 2, 3 and 4; count 7, the same sentence, concurrent with counts 1, 2, 3, 4 and 6; count 10, the same sentence, concurrent with counts 1, 2, 3, 4, 6 and 7; count 12, the same sentence, con-

current with counts 1, 2, 3, 4, 6, 7 and 10; count 13, the same sentence, concurrent with counts 1, 2, 3, 4, 6, 7, 10 and 12; count 15, the same sentence, concurrent with counts 1, 2, 3, 4, 6, 7, 10, 12 and 13; count 16, the same sentence, concurrent with counts 1, 2, 3, 4, 6, 7, 10, 12, 13 and 15; count 18, the same sentence, concurrent with counts 1, 2, 3, 4, 6, 7, 10, 12, 13, 15 and 16; and count 20, the same sentence, concurrent with counts 1, 2, 3, 4, 6, 7, 10, 12, 13, 15, 16 and 18.

I consider Mr. Allen and Mr. Pickett less culpable because I consider Mr. Post, as I said earlier, to have been the leader, and Mr. Post is a member of the Bar of this

Court. For that reason the sentences imposed on  
4242 Mr. Allen and Mr. Pickett are not quite as severe.

I sentence Bill M. Allen on count 1, the conspiracy count, to not less than 12 months and not more than 36 months. He is to serve four months in a jail-type institution or treatment institution, and the execution of the remainder of his sentence is suspended and he will be placed on probation for five years. On count 2, the first of 12 mail fraud counts, the same sentence, concurrent with the sentence imposed on count 1; count 3, the same sentence, concurrent with counts 1 and 2; count 4, the same sentence, concurrent with counts 1, 2 and 3; count 6, the same sentence, concurrent with counts 1, 2, 3 and 4; count 7, the same sentence, concurrent with counts 1, 2, 3, 4 and 6; count 10, the same sentence, concurrent with counts 1, 2, 3, 4, 6 and 7; count 12, the same sentence, concurrent with counts 1, 2, 3, 4, 6, 7 and 10; count 13, the same sentence, concurrent with counts 1, 2, 3, 4, 6, 7, 10 and 12; count 15, the same sentence, concurrent with counts 1, 2, 3, 4, 6, 7, 10, 12 and 13; count 16, the same sentence, concurrent with counts 1, 2, 3, 4, 6, 7, 10, 12, 13, and 15; count 18, the same sentence, concurrent with counts 1, 2, 3, 4, 6, 7, 10, 12, 13, 15 and 16; and count 20, the same sentence, concurrent with counts 1, 2, 3, 4, 6, 7, 10, 12, 13, 15, 16 and 18.

Leroy W. Pickett, I sentence him on count 1, the  
4243 conspiracy count, to not less than 12 months and not

more than 36 months. He is to serve four months, in a jail-type or treatment-type institution, the execution of the remainder of the sentence to be suspended and he be placed on probation for five years. On count 2, the first of 12 mail fraud counts, the same sentence, concurrent with the sentence on count 1; count 3, the same sentence, concurrent with counts 1 and 2; count 4, the same sentence, concurrent with counts 1, 2 and 3; count 6, the same sentence, concurrent with counts 1, 2, 3 and 4; count 7, the same sentence, concurrent with counts 1, 2, 3, 4 and 6; count 10, the same sentence, concurrent with counts 1, 2, 3, 4, 6 and 7; count 12, the same sentence, concurrent with counts 1, 2, 3, 4, 6, 7 and 10; count 13, the same sentence, concurrent with counts 1, 2, 3, 4, 6, 7, 10 and 12; count 15, the same sentence, concurrent with counts 1, 2, 3, 4, 6, 7, 10, 12 and 13; count 16, the same sentence, concurrent with counts 1, 2, 3, 4, 6, 7, 10, 12, 13 and 15; count 18, the same sentence, concurrent with counts 1, 2, 3, 4, 6, 7, 10, 12, 13, 15 and 16; and count 20, the same sentence, concurrent with counts 1, 2, 3, 4, 6, 7, 10, 12, 13, 15, 16 and 18.

---

### AGREEMENT

This Memorandum of Agreement, made this .... day of ....., 1962, by and between Troy V. Post, Jr., Bill M. Allen and Leroy W. Pickett, individually and as officers and directors of Lakewood Management Corporation, a corporation, PAP, Inc., a corporation, Country Club Developers, Inc., a corporation, Golf Contractors, Inc., a corporation, Lakewood Management Corporation, (a Maryland corporation), PAP, Inc., (a Maryland corporation), Country Club Developers, Inc. (a District of Columbia corporation), and Golf Contractors, Inc. (a Texas corporation, hereinafter collectively referred to as **FIRST PARTY**, and Lakewood Country Club, Inc., a Maryland corporation), hereinafter referred to as **SECOND PARTY**,

## WITNESSETH :

WHEREAS, heretofore FIRST PARTY commenced upon a program to organize, build and operate the Lakewood Country Club in Montgomery County, Maryland, and made progress in connection with such project, having made arrangements to lease the necessary land with an option to buy, having built up the membership of the Club to some 1,800 members, and having built a golf course, swimming pools, bath house, tennis courts and portions of the club house; and

WHEREAS, numerous disputes and differences have arisen and have continued between the parties, resulting in claims and counterclaims being made between FIRST PARTY and SECOND PARTY, and resulting further in litigation now pending as hereinafter described; and

WHEREAS, the parties are agreed that if said litigation continues, with the attendant negative publicity that will inevitably follow, further creating in the public's mind the impression that Lakewood Country Club is in turmoil and in financial difficulty, and that memberships in such country club are undesirable, it will render virtually impossible the building up of the prestige of the club in such a manner as is necessary for the successful completion and continuance of the club in existence;

Now, THEREFORE, in order to avoid the damaging effects that continue litigation will have upon all parties, and to avoid the trouble and expense of further litigation, and in consideration of the mutual covenants herein contained, the parties hereto do hereby agree as follows:

1. Each party hereto agrees to and does hereby release, discharge and acquit the other party, and their stockholders, directors, officers, agents and representatives, of and from any and all claims, causes of action, demands, suits, obligations or indebtedness which have arisen or might have arisen or might arise in the future, of whatsoever nature, arising out of any and all transactions between the parties which have occurred from the beginning of the world to the



present date, it being the intention of the parties that this shall be a general release, which releases, discharges and acquits said persons and corporations, and each of them, from any claim, cause of action or demand upon any theory whatsoever; and in particular, without any limitation upon the generality of the foregoing, this release shall apply to all claims, counterclaims, and causes of action asserted by all plaintiffs and defendants in that certain suit styled Lakewood Country Club, Inc., et al vs. Troy V. Post, Jr., et al, No. 805-61 on the docket of the United States District Court for the District of Columbia, and that certain suit styled Vinton E. Lee, Conservator, et al vs. Troy V. Post, Jr., et al, No. 1157-61 on the Docket of the same court, and that certain suit and counterclaim styled No. MC 11729-61 on the docket of the Municipal Court of the City of Washington in the District of Columbia, and for the same consideration each party to said suits agrees to cause said suits and all claims, counterclaims and causes of action asserted therein to be dismissed by all parties thereto, with prejudice to the refiling of same.

This general release herein set forth does not release the claims of the SECOND PARTY against the following:

1. Pioneer Point Associates
2. Shore Club Estates
3. Quidnessett Hotel and Country Club
4. Notes and/or proceeds from the sale of land (Viers Tract) as set forth in Schedule A.
5. Extenso Hanger Co.

The FIRST PARTY shall secure and deliver to the SECOND PARTY, simultaneously with the execution of the agreement, General Releases by and between the FIRST and SECOND parties and the following persons:

- (a) Freeland-Hayes
- (b) Country Club Developers, Inc., a Delaware Corporation.



- (c) Pan Am Land and Development Company
- (d) Sam Snead
- (e) Snead Nixon Company
- (f) Bill M. Allen & Associates

2. FIRST PARTY agrees that it will forthwith transfer, assign and convey to Lakewood Country Club, Inc. all of the assets of FIRST PARTY corporations, subject to the balance of the accounts and notes payable, consisting of eight pages, dated January 22, 1962, a copy of which is attached hereto, made a part hereof, and referred to as Schedule A. In this connection, Lakewood Country Club, Inc., recognizing that FIRST PARTY has effectively divested itself of all assets pertaining to the Lakewood Country Club, does hereby agree to indemnify, keep harmless and defend FIRST PARTY against all liability, claims, demands, judgments or indebtedness hereby accepted by Lakewood Country Club, Inc., as set forth in the attached Schedule A.

3. Simultaneously with the execution of this Agreement, the FIRST PARTY hereto will direct Vinton E. Lee, Conservator, through the Court, to pay over to the SECOND PARTY that certain deed of trust note and deed of trust, dated June 14, 1961, payable to Glenhaven Country Clubs, Inc. (now known as Sandy Lake Country Club, Inc.) to Golf Contractors, Inc., in the original principal sum of One Hundred Four Thousand Dollars (\$104,000.00), free of all liens and claims.

4. It is agreed that all sums heretofore disbursed to or for the benefit of Bill M. Allen, Troy V. Post, Jr. and Leroy W. Pickett, or any of them, and/or their agents, whether corporate or otherwise, shall be considered to be full and reasonable consideration for any and all services heretofore rendered by them to SECOND PARTY Lakewood Country Club, Inc.

5. The parties hereto further agree, individually and collectively, to hold the Conservator-Receiver, Vinton E. Lee, harmless against any and all claims and/or actions,

suits and all claims and/or liabilities of any nature whatsoever in connection with services rendered for and in the behalf of the parties hereto.

6. Nothing in this agreement contained shall ever be construed in evidence as an admission of liability of any character against either party, or any of them, the only purpose of this agreement being to prevent further litigation and to secure a release and discharge of all controversies and disputes which might exist between the parties by virtue of the claims asserted, as well as those which might have been asserted, it being understood that this is a contractual agreement and not a mere recital.

EXECUTED on the day and year above written.

.....  
TROY V. POST, JR.

.....  
BILL M. ALLEN

.....  
LEROY W. PICKETT

ATTEST: LAKEWOOD MANAGEMENT CORPORATION

..... By .....

ATTEST: PAP, INC.

..... By .....

ATTEST: COUNTRY CLUB DEVELOPERS, INC.

..... By .....

ATTEST: GOLF CONTRACTORS, INC.

..... By .....

FIRST PARTY

ATTEST: LAKEWOOD COUNTRY CLUB, INC.

..... By .....

SECOND PARTY

## SCHEDULE A

## SUMMARY

Cash to Post, Allen, and Pickett (A-1)		\$203,538.71
Cash to other companies in Which Post, Allen and/or Pickett have an interest (A-2)	\$129,151.09	
Less: Income from other such companies (A-3)	35,705.00	93,446.09
		<hr/>
Cash to Freeland-Hayes (A-4)	98,887.00	\$296,984.80
Advertising and Sales Promotion (A-4)	83,221.76	
Salesmen commissions (A-4)	74,146.73	
Auto, travel, and telephone expense (A-4)	33,318.35	
Furniture, Arlington Towers (A-4)	6,505.67	296,079.51
		<hr/>
		\$593,064.31

## SCHEDULE A-1

LAKWOOD COUNTRY CLUB, INC.,  
COUNTRY CLUB DEVELOPERS, INC., AND P. A. P., INC.

## MANAGEMENT AND ADVISORY FEES, SALARIES, SALES COMMISSIONS, LOANS

July 1, 1959 through March 31, 1961

	Troy V. Post, Jr.	Bill M. Allen	L. W. Pickett	Total
<hr/>				
<i>Lakewood Country Club, Inc.</i>				
Management and Advisory Fees	\$ 87,536.46	\$ 704.34	\$ 1,063.99	\$ 89,304.79
Sales Commissions	6,010.00	5,421.09	13,034.89	24,465.98
<i>Country Club Developers, Inc.</i>				
Management and Advisory Fees	11,930.54	14,293.14	15,698.26	41,921.94
Salaries	2,710.00	4,878.00	7,588.00	15,176.00
Loans	2,500.00	10,500.00		13,000.00
<i>P. A. P., Inc.</i>				
Salaries	2,710.00	2,710.00		5,420.00
Loans	2,200.00	1,700.00	10,350.00	14,250.00
TOTALS	<hr/> \$115,597.00	<hr/> \$40,206.57	<hr/> \$47,735.14	<hr/> \$203,538.71

## SCHEDULE A-2

LAKEWOOD COUNTRY CLUB, INC.,  
COUNTRY CLUB DEVELOPERS, INC., AND P. A. P., INC.

LOANS AND ADVANCES TO OTHER COMPANIES IN WHICH POST, ALLEN AND/OR  
PICKETT HAVE AN INTEREST

Balances as of March 31, 1961

	Lakewood, Inc.	Country Club Developers, Inc.	P. A. P., Inc.	Total
Extenso Hanger Co.		\$11,000.00		\$ 11,000.00
Eden Roc Country Club			\$ 4,000.00	4,000.00
Golf Contractors, Inc.	\$ 15,000.00	48,685.00		63,685.00
Pioneer Point Associates	3,500.00	11,227.46		14,727.46
Quidnesset Country Club	4,002.50	814.26		4,816.76
Shore Club Estates	6,227.40	24,694.47		30,921.87
<b>TOTALS</b>	<b>\$ 28,729.90</b>	<b>\$96,421.19</b>	<b>\$ 4,000.00</b>	<b>\$129,151.09</b>

## SCHEDULE A-3

LAKEWOOD COUNTRY CLUB, INC.,  
COUNTRY CLUB DEVELOPERS, INC., AND P. A. P., INC.

SCHEDULE OF LOANS AND NOTES PAYABLE

	Lakewood, Inc.	Country Club Developers, Inc.	P. A. P., Inc.	Total
Country Club Developers, Inc. (Del.)	\$4,900.00	\$ 5,700.00	\$ 4,500.00	\$ 15,100.00
Pan-Am Land and Development Co.		1,000.00		1,000.00
Eden Roc Club		11,105.00		11,105.00
Troy V. Post— Attorney		7,000.00		7,000.00
Pioneer Point Associates			1,500.00	1,500.00
<b>TOTALS</b>	<b>\$4,900.00</b>	<b>\$24,805.00</b>	<b>\$ 6,000.00</b>	<b>\$ 35,705.00</b>

## SCHEDULE A-4

LAKEWOOD COUNTRY CLUB, INC.,  
COUNTRY CLUB DEVELOPERS, INC., AND P. A. P., INC.

	Lakewood, Inc.	Country Club Developers, Inc.	P. A. P., Inc.	Total
Advertising and Sales				
Promotion	\$ 73,447.77	\$ 9,773.99		\$ 83,221.76
Freeland-Hayes	98,887.00			98,887.00
Salesmen Commission	74,146.73			74,146.73
Automobile Expense	768.46	12,070.78		12,839.24
Telephone Expense	6,805.50	5,836.91		12,642.41
Travel Expense	996.56	2,866.01	3,974.13	7,836.70
Furniture, Arlington Towers Apartment		6,505.67		6,505.67
	<u>\$255,052.02</u>	<u>\$37,053.36</u>	<u>\$ 3,974.13</u>	<u>\$296,079.51</u>

1. Mayor Alexander Greene, in describing a meeting at Thompson's Restaurant, testified:

"A. Mr. Post and Mr. Allen Pickett were there, and Mr. Bogart and Mr. Brownell were there. Mr. Prescott Allen, who is Editor of the Bethesda Record, who I think was also later placed on the Advisory Board, was there. And there were various members of the membership, a committee of membership present.

Estok?

I believe Mr. Estok. I think Walter Ewell and Mr. Murdock. I DO NOT RECALL EXACTLY, but there was quite a large group at that session." (Tr. 201-202)

2. Mayor Alexander Greene, after having been shown a brochure of the Texas clubs (Defendants' Exhibit No. 2), testified:

"Q. Let me show you what has been marked as Defendants' Exhibit No. 2 and ask you to look through it and see if that may not have been one of the items which Mr. Pickett showed you at the meeting?

A. It may be. But I do not remember it."

• • •

"Q. You can not identify that as what he showed you?

A. *It may be. I do not remember.* But there was material like that." (Tr. 219-220)

3. Mr. Edward J. Bacon, in testifying about his actions following receipt of the by-laws, stated:

"Q. But you didn't contact anyone associated with the club about it?

A. I contacted—about that time I contacted whoever it was that was representing the club on site, in the trailer, whatever existed at that time.

Q. *Do you recall that gentleman's name?*

A. *No, I do not.*" (Tr. 268)

4. Mr. Bacon, questioned about the minimum spending requirement, testified:

"Q. Now this meeting was almost seven years ago. Do you recall mention in the conversation of the term minimum spending requirement?

A. I remember bringing it up. Either I brought it up or Mr. Elbers.

Q. In what manner was it brought up?

A. As a question, will there be.

Q. And you used that specific term?

A. *I don't remember it.*" (Tr. 269-270)

5. Mr. Bacon, questioned about dues income, testified:

"Q. You discussed, for example, did you not, or at least you considered at the time, for example, the type of profit that would be available from bar and restaurant sales?

A. Yes. We discussed these things. *I don't remember the numbers though.*" (Tr. 278)

6. Charles Peabbles, the Corporation Trust Company representative, queried about the Casa View by-laws, stated:

"Q. And the copy that you made, 6-C is a copy of the by-laws of Lakewood Country Club, is it not?

A. Right.

## SCHEDULE A-4

LAKEWOOD COUNTRY CLUB, INC.,  
COUNTRY CLUB DEVELOPERS, INC., AND P. A. P., INC.

	Lakewood, Inc.	Country Club Developers, Inc.	P. A. P., Inc.	Total
Advertising and Sales Promotion	\$ 73,447.77	\$ 9,773.99		\$ 83,221.76
Freeland-Hayes	98,887.00			98,887.00
Salesmen Commission	74,146.73			74,146.73
Automobile Expense	768.46	12,070.78		12,839.24
Telephone Expense	6,805.50	5,836.91		12,642.41
Travel Expense	996.56	2,866.01	3,974.13	7,836.70
Furniture, Arlington Towers Apartment		6,505.67		6,505.67
	<u>\$255,052.02</u>	<u>\$37,053.36</u>	<u>\$ 3,974.13</u>	<u>\$296,079.51</u>

1. Mayor Alexander Greene, in describing a meeting at Thompson's Restaurant, testified:

"A. Mr. Post and Mr. Allen Pickett were there, and Mr. Bogart and Mr. Brownell were there. Mr. Prescott Allen, who is Editor of the Bethesda Record, who I think was also later placed on the Advisory Board, was there. And there were various members of the membership, a committee of membership present.

Estok?

I believe Mr. Estok. I think Walter Ewell and Mr. Murdock. I DO NOT RECALL EXACTLY, *but there was quite a large group at that session.*" (Tr. 201-202)

2. Mayor Alexander Greene, after having been shown a brochure of the Texas clubs (Defendants' Exhibit No. 2), testified:

"Q. Let me show you what has been marked as Defendants' Exhibit No. 2 and ask you to look through it and see if that may not have been one of the items which Mr. Pickett showed you at the meeting?

A. It may be. *But I do not remember it.*"

• • •

"Q. You can not identify that as what he showed you?

A. *It may be. I do not remember.* But there was material like that." (Tr. 219-220)

3. Mr. Edward J. Bacon, in testifying about his actions following receipt of the by-laws, stated:

"Q. But you didn't contact anyone associated with the club about it?

A. I contacted—about that time I contacted whoever it was that was representing the club on site, in the trailer, whatever existed at that time.

Q. *Do you recall that gentleman's name?*

A. *No, I do not.*" (Tr. 268)

4. Mr. Bacon, questioned about the minimum spending requirement, testified:

"Q. Now this meeting was almost seven years ago. Do you recall mention in the conversation of the term minimum spending requirement?

A. I remember bringing it up. Either I brought it up or Mr. Elbers.

Q. In what manner was it brought up?

A. As a question, will there be.

Q. And you used that specific term?

A. *I don't remember it.*" (Tr. 269-270)

5. Mr. Bacon, questioned about dues income, testified:

"Q. You discussed, for example, did you not, or at least you considered at the time, for example, the type of profit that would be available from bar and restaurant sales?

A. Yes. We discussed these things. *I don't remember the numbers though.*" (Tr. 278)

6. Charles Peabbles, the Corporation Trust Company representative, queried about the Casa View by-laws, stated:

"Q. And the copy that you made, 6-C is a copy of the by-laws of Lakewood Country Club, is it not?

A. Right.



Q. Now I am going to ask you if you have ever seen Exhibit 6-E before.

A. *I do not know, sir.*" (Tr. 329)

Compare Tr. 2867 at which point Mr. Post identified Defendants' Exhibit 6-C as having been furnished by him to Mr. Peabbles for the purpose of preparing the Lakewood by-laws.

7. Dr. Boch, questioned about a conversation with Mr. Pickett, testified:

"Q. Now, did there come a time in 1959, Mr. Bock, when Mr. Pickett called you and you and he had a conversation?

A. Yes, sir.

Q. And what part of the year would that be?

A. *I cannot remember.*" (Tr. 378-379)

8. Dr. Boch further testified:

"Q. Were you asked to do anything in connection with the Lakewood Corporation?

A. I was asked to be an officer, in a holding company for some type of company leading to the formation of the club.

Q. And who asked you to assume this position?

A. *I do not remember, actually. Probably Mr. Pickett, or it could have been somebody at the table. I do not recall really.*"

\* \* \*

"The Court: Do you have any recollection of who asked you?

The Witness: *No, I do not remember actually which.*

By Mr. Loewy:

Q. Were all of the gentlemen you just named seated at one table?

A. *I do not remember. I assume they were.*

Q. Was anyone else seated there?

A. I think some secretaries.

Q. Were there some girls seated there?

A. I think there were some girls. *I cannot swear to it.*

Q. How long did you say you had been friends with Mr. Pickett?

A. Since High School.

Q. Did they offer you any particular office in the Lakewood Country Club?

A. *I cannot remember.*

Q. Did they ask you to become a director?

A. *I do not know actually exactly what the capacity was.*" (Tr. 381-382)

9. Dr. Boch further testified:

"Q. Let me ask you this: Was it Mr. Vranich or Mr. Van Veen who invited you to become an officer of the Lakewood Country Club?

A. No.

Q. Was it Mr. Rogers?

A. I think I said Mr. Pickett.

Q. *You are now sure that it was Mr. Pickett?*

A. *I do not know. I honestly cannot be—*

Q. That is why I am asking you how you are sure that it is not. Was it Mr. Rogers, could you say that, or was it Mr. Rogers?

A. *I do not know.*" (Tr. 382)

10. With respect to the bank authorization which Dr. Boch was requested to sign, he testified:

"Q. And what did you tell him about the papers?

A. *I don't remember telling him anything about the paper.*" (Tr. 387)

11. Dr. Boch's testimony continues:

"Q. Now, *do you know* who the president of the club was?

The Witness: *No.*" (Tr. 388)

12. On cross-examination in discussing the Mayflower meeting, Dr. Boch testified:

"Q. But at some time prior to the meeting at the Mayflower Hotel that you attended, you had some contact with Mr. Pickett?

A. Yes.

Q. Can you relate to us the substance of that conversation?

A. *I cannot remember.*" (Tr. 394)

13. Dr. Boch further testified:

"Q. Doctor, does it refresh your recollection if I were to tell you that the paper which you were asked to sign was a bank signature authorization for a bank account in the old Munsey Trust Company?

A. *I do not remember it at all.*

Q. Is it possible that that is the kind of document that it was?

A. *I have no recollection.*

Q. Is it possible that you were told or advised not to sign such a document because you might incur some personal liability and because of that you later declined and advised Mr. Pickett that you declined to sign it?

A. *I do not remember.*

Q. In fact, *you have very little recollection of that meeting in the Mayflower at all*, is that correct?

A. *That is correct.*

Q. You wouldn't deny that the document which was shown to you in the Mayflower was a signature form for a banking authorization?

A. *I just have no recollection of it.*" (Tr. 397)

14. In questioning about a discussion with Mr. Pickett on the golf, Dr. Boch's testimony continues:

"The Court: What did he say at that time?

The Witness: *I just cannot exactly recall.*

The Court: I mean the substance.

The Witness: *Something about becoming a Board of Director member at Lakewood.*" (Tr. 401)

15. Robert Vranich, having been showed Government's Exhibit No. 39 (the Operator's Agreement), stated:

"Q. Do you recognize that document? Look it over for a moment.

A. *Vaguely.*" (Tr. 428)

16. When asked about the signatures of that document, Mr. Vranich testified:

“Q. Was anyone else present at the time that you signed that in Mr. Allen’s apartment?

A. Mr. Rogers. I remember that, I believe.

Q. Mr. Rogers was there then?

A. Yes.

Q. Now about Mr. Allen?

A. Oh, yes, he was there.

Q. Did he sign that while you were there?

A. *I do not remember.*

Q. Was Mr. Post present at the time?

A. *I do not remember that, either.”* (Tr. 429).

17. Further questioning about that document elicited the following:

“Q. I do not believe I asked you, Mr. Vranich, where this was signed, Government’s Exhibit No. 39 for identification?

A. *I cannot say. I do not remember.* I could say the apartment, but I could not back it up.” (Tr. 431)

18. Questioned further about the same document, Mr. Vranich testified:

“Q. Are you at this time, Mr. Vranich, able to recall what was said to you regarding that document at the time you signed it?

A. *No.*

Q. Is your recollection then exhausted with respect to that subject?

A. *Yes, right now.”*

\* \* \*

“Q. Does what you have read refresh your recollection as to what was said to you about that contract at the time you signed it?

A. Well, the only thing I can say is what my deposition says, there would be a brief—

Mr. Bergan: Excuse me, Your Honor. That doesn’t refresh his recollection.

The Court: I think the question now, sir, is this, whether having read this material presented to you by

Mr. Loewy, do you now have an independent recollection of what was said to you on the occasion you signed this exhibit known as Government's 39 for identification?

The Witness: *No, sir.*" (Tr. 448-449)

19. Questioned about the minute book, Mr. Vranich stated:

"Q. Now, Mr. Vranich, were you ever shown that book prior to this time, at a time when Mr. Post was present?

Do you recall?

A. *I don't remember, no.*" (Tr. 453)

20. Questioned about the origin of the Mayflower meeting, Mr. Vranich gave the following testimony:

"Q. Who invited you to the Mayflower meeting, Mr. Vranich, if you recall?

A. *I can't remember. As I stated earlier in reference, I was under the opinion that it was going to be a dinner and social evening.*" (Tr. 469)

21. Questioned about Dr. Boch's participation at the Mayflower meeting, Mr. Vranich testified:

"Q. Do you recall Doctor Bock being asked to sign it?

A. *I can't say that—I can't say yes to that question. I don't remember. I wasn't paying that much attention.*

Q. Were there any other documents that you were asked to sign at that time?

A. *I can't remember.*" (Tr. 470)

22. As to his responsibilities as an officer of Lakewood, Mr. Vranich testified:

"Q. Incidentally, before we get to this, Mr. Vranich, I believe you stated yesterday that when you were asked and agreed to become an officer of Lakewood you advised whoever it was who asked you that you were

quite busy with your business endeavors and wouldn't have a great deal of time to spend on this?

A. Yes.

Q. Do you recall who it was that you advised of that fact?

A. *I can say Mr. Allen, but I don't—I can't—*

Q. Was it in the presence of a good many people or just a conversation?

A. I don't remember that." (Tr. 475-476)

23. Testifying with respect to a deposition taken in 1961, Mr. Vranich stated:

"Q. And on July 12, 1961, some five years ago, *would you say that your recollection of the events of Lakewood—the Lakewood events was better than it was today?*

A. Yes." (Tr. 477)

24. Asked further about Government's Exhibit No. 39 (the Operator's Agreement), Mr. Vranich stated:

"Q. Now, Mr. Vranich, let me show you what you have seen several times in the last two days, Government's Exhibit No. 39, and ask you *if you recall where you were and with whom at the time you signed the agreement?*

A. *Well, no.* I can qualify the answer but I can't say—I will say no as the answer to your question.

Q. You cannot say where you were or with whom at the time you signed this?

A. Each document, no, *I can't remember.* I stated, I believe, with Mr. Allen, but I don't—of course, with—well—

The Court: I didn't hear you. Will you repeat it turning to the microphone.

The Witness: I was looking the wrong way.

I assume that these people that signed it would be there but *I can't remember.*

By Mr. Bergan:

Q. And the signatures on the document are Mr. Allen, Mr. Post, Mr. Vranich, and Mr. Rogers. Is that correct, sir?

A. Correct.

Q. You are not able to say that you were not in the presence of those four gentlemen—those three other gentlemen at the time you signed that document?

A. No, I can't." (Tr. 482-483)

25. Paul Rogers, when questioned about his initial efforts at Lakewood, testified:

"Q. What office were you asked to assume?

A. Initially, I don't recall what office I was to assume.

Q. Were you elected President of the Club?

A. Presumably.

Q. Not presumably. Do you know whether or not you were elected?

A. Do you mean as to the legal qualification? I was elected according to Mr. Post, Mr. Allen and Mr. Pickett.

Q. How did you find out that you were President of the Club? If you recall.

A. I don't recall that, specifically. That is as to time and place, etc." (Tr. 500-501)

26. When asked about a meeting at the Bethesda-Chevy Chase High School Gymnasium, Mr. Rogers testified:

"Q. How did you know the meeting was going to be held, had you called it?

A. I think there was a specification that you had to have an annual meeting.

Q. My question was: Did you call it?

A. No, I didn't.

Q. Well, do you recall how you were notified how such a meeting was taking place?

A. No, I don't recall.

Q. Did someone tell you to go out there?

A. Presumably; yes.

Q. Do you recall whether or not anyone told you to go out there?

A. Well, somebody told me to go. I just don't recall who told me to go out there." (Tr. 512)

27. Mr. John Pardee, when interrogated about the by-laws, stated:

"Q. Did you notice in the bylaws a provision which authorized the imposition of a minimum spending requirement at some time in the future?

A. I don't recall having noticed that."

28. Mr. Jack Harvey was unable to identify either Mr. Post or Mr. Allen. (Tr. 546-547)

29. Mr. Harvey, in discussing a meeting at his home at which Mr. Pickett was present, stated:

"Q. Could you tell us again how he identified himself?

A. Well, he introduced himself as the—*after seven years I couldn't tell you his exact words—*

Q. I understand.

A. I am sorry." (Tr. 570)

30. Miss Barbara Norton, asked about her early contacts with Bill Allen, stated:

"Q. And prior to your first discussions with Mr. Allen, had you had business dealings with him?

A. Yes. He had been affiliated with a beauty pageant type of thing that took place in our hotel once or twice, I believe.

Q. Would that have been 1958 or 1959?

A. Right.

Q. Or 1957 or 1958?

A. Yes, around that time. *It is so far back I do not recall the exact years. It was prior to the Lakewood Country Club, though.*" (Tr. 599-600)

31. Miss Norton, questioned about the banquet at the Sheraton-Park, stated:

"Q. Do you recall how many people were in attendance at the Valentine's party?

A. If I remember correctly, I think wasn't there a big snow storm or something? *I do not remember.*



I am sure it was quite successful but I do not remember it now.

Q. Do you recall the price per ticket?

A. *No, I do not.*

Q. Do you recall how much the total price of the banquet was, how much the Sheraton charged the Lakewood Country Club for that banquet?

A. *No, I do not.* But I do not think it was a dinner. I think that it was a dance, was it not? *I do not recall.*

Q. Do you recall the price that was charged for the dinner or dance, whatever it was.

A. No, I am sorry. I do not get involved in any of that anyway, and I never pay, so I do not know." (Tr. 605-606)

32. Norma Matthews, the lady in charge of the mailing service, stated:

"Q. Well, who precisely gave the instructions to you to make each of the subsequent three mailings, if you recall?

A. Well, I wouldn't remember that. I think it was probably Mr. Wilhite. But when I discussed it with both of them out there we went over the areas and we were just told to 'go ahead.' I don't know who actually told us to go ahead, though." (Tr. 625-626)

\* \* \*

"Q. I see. Subsequently there was a second mailing. Who gave you the instructions, if you can recall, to make the second mailing?

A. *I don't recall.* I imagine it was Mr. Wilhite. I don't know.

Mr. Loewy: I object.

The Court: Disregard that, ladies and gentlemen. Just what you know, please.

By Mr. Bergan:

Q. I am just asking for your best recollection.

A. *I couldn't remember who called me on the phone to tell me.*

Q. And with respect to the third mailing who was it who gave you your instructions to make that mailing?

A. *I wouldn't know specifically who that was either.*" (Tr. 627-628)

33. Arthur Garis, questioned about his membership application, stated:

"Q. Was the document signed by the other party in your presence, Mr. Garis?

A. *I am not too sure.*

Q. Well, was the application filled out at the time that Mr. Pickett and Mr. Allen were in your restaurant to verify the terms of your membership?

A. *I don't know.*" (Tr. 638)

34. James Crowley, formerly of the Advertising Department of the Washington Post, testified:

"The Court: Mr. Crowley, are you speaking generally now in the preparation of an ad, or are you speaking particularly to these particular ads you have before you?

In other words, who prepared the copy in respect to Government's 61 through 70, the ads you have before you? Do you know?

The Witness: Who prepared the copy of this?

The Court: Yes.

The Witness: *I don't know.*" (Tr. 656)

35. Paul H. Hockwalt, in testifying concerning a discussion at Lakewood's Cordell Avenue office, stated:

"Q. Are you able to state at this time that Mr. Post was present at the time the discussion with respect to minimum spending was had?

A. *No, sir. I cannot so state.*" (Tr. 688)

It may be noted that at Tr. 698 the entire conversation of Mr. Hockwalt was stricken on motion of the defense.

36. Harry Calevas, testifying concerning a Sunday, October, 1959 visit to the club site, stated:

"Q. Did you see any individual or talk to any individual out at the club site at that time?

A. *I have tried to recall, and my recollection is now that there was someone at the site. And I believe—I am not exactly sure whether there was someone at*

the site that referred me to an office in Bethesda, or whether I had been previously informed that the office was in Bethesda.

But in any event we left the site that Sunday afternoon and went right to this office in Bethesda. *And I am not sure whether I was sent to that office by someone on the site, or whether I had been given information prior to my going to inspect the site.*" (Tr. 702)

37. William Reckert, discussing a conversation with one of Lakewood's salesmen, stated:

"Q. Did the salesman at that time identify who the individuals were who were going to develop the Lakewood Country Club?

A. Yes, he did.

Q. And who were those individuals?

A. He mentioned—I only can remember the name Allen, and I forget the other names.

Q. You recall the name Allen?

A. Yes, sir." (Tr. 731)

38. Mrs. F. Ruskin Winthrop testified:

"Q. Did either you or your husband have any personal acquaintance with any of these individuals mentioned in the ad?

A. *I can't quite remember, frankly.*" (Tr. 766-767)

39. James Nalle, questioned concerning the receipt of a letter from Lakewood, testified:

"Q. Now, let me show you what the Clerk has marked as Defendants' Exhibit No. 15 for identification, and ask you to read through it and tell me whether you recall receiving that letter.

A. *I don't remember one hundred percent whether I did, but I was on the mailing list as a member and I am sure that if it was sent out, I received it.*

There were so many communications.

The Court: Mr. Nalle, the question is do you remember? Just to your best recollection, do you remember receiving that letter?

The Witness: *Definitely, no, sir.*" (Tr. 814)

40. Questioned further about his participation in some of the Lakewood activities, Mr. Nalle testified:

"Q. Had you been asked to—as a member of the club up to that point, had you been asked to vote on—or given an opportunity to vote on the installation of these new practices which the members were putting in?

A. If that was in—I am sure I was if I was still an active member at that time.

Q. My question to you, sir, is do you recall?

A. *I don't remember exactly, no, sir.*" (Tr. 818)

41. Dr. Sam F. Seeley, questioned about the meeting at the Bethesda-Chevy Chase High School Gymnasium, stated:

"Q. *Do you recall* who presided at the meeting which you attended?

A. *No, sir.*

Q. Do you remember a Doctor—excuse me—a Mr. Paul Rogers?

A. *At this time I wouldn't be able to recall the names of anyone nor the substance of the arguments.*" (Tr. 875)

42. Mr. Walter Rutland, questioned about representations made by the salesman, stated:

"Q. Did the salesman tell you at that time that these proprietors had developed other clubs?

A. *I think so.*

Q. Can you be certain, Mr. Rutland?

A. *I'm sorry I couldn't swear to it, but I think in a general conversation, why I was interested, we had a general discussion in my office, I think about an hour, quite a lot of facts relating to life membership, a number of questions I wanted to ask. I'm sure I asked him and he replied, I'm sure very fully. He left a good impression on my mind.*" (Tr. 886-887)

43. Mr. Henry George, questioned about brochures of the Texas clubs, stated:

"Q. Can you tell us what those photographs were?

A. *It's been a long time, sir, but I remember seeing pictures of the countryside where the club was to be built, and there were other photographs with pictures of a similar type club in Texas.*

Q. Do you recall the name of this club in Texas, Mr. George?

A. *No, I don't. I'm sorry.*" (Tr. 918)

44. Mr. Harold Timken, when asked about a conversation between himself and Mr. Post, stated:

"Q. Did Mr. Post at this time identify who the promoters of the Lakewood Country Club were?

A. Yes. He mentioned himself, and, as I said, Mr. Allen.

*I cannot recall at the time that he did mention Mr. Pickett's name. He may have, but I cannot recall that.*" (Tr. 962-963)

45. Questioned further about a conversation with Mr. Post, Mr. Timken stated:

"Q. Well, was Mr. Post asked about how many life members there were at that time?

A. *As I have to say, it's been some years, it is my recollection that he was, but I cannot specifically say I remember that.*" (Tr. 988)

46. Questioned about an early 1961 meeting in a downtown Washington hotel, Mr. Timken stated:

"Q. Now, again early 1961, did there come a time, Mr. Timken, that you attended a meeting at a hotel in downtown Washington, at which any of the principals, either Mr. Post, Mr. Allen, or Mr. Pickett was present?

A. Yes.

Q. Well, were all three present or just one?

A. Mr. Post was present, to my knowledge.

*I cannot recall for a fact whether Mr. Allen and Mr. Pickett were there."* (Tr. 989-990)

47. When questioned about the meeting in Thompson's Restaurant, Mr. Timken stated:

"Q. Do you recall what other members of the newly elected board of directors were also present?

A. I remember distinctly that Mr. Hepburn was there, Mr. Estok, Mr. Biles, and Mr. Murdock. *Beyond that I can't recall specifically."* (Tr. 1022)

48. Questioned further about the meeting in the Washington hotel, Mr. Timken stated:

"Q. And was either Mr. Post or Allen or Pickett present?

A. I know Mr. Post was present. I think Mr. Allen and Mr. Pickett were present. *But I cannot for a fact recall the latter two being there."* (Tr. 1036)

49. Testifying with respect to one of his early meetings with Mr. Post, Mr. Timken stated:

"Q. Now, as I recall your testimony this morning, the next event that occurred was that Mr. Post came to Mr. Marsden's home, I believe, and there were several other people present. At whose invitation did Mr. Post come to Mr. Marsden's home?

A. *Well I can't recall exactly.* In fact, I think Mr. Simmons introduced us to Mr. Post. *If I am not mistaken, I think my first meeting with Mr. Post was at a Rockville chamber of commerce luncheon, where he introduced us. I think Mr. Strong, Mr. Marsden and myself probably extended the invitation to Mr. Post to join with us—but with Mr. Simmons being the intermediary."* (Tr. 1046)

50. With respect to the hearing before the Board of Zoning Appeals, Mr. Timken stated:

"Q. Mr. Post spoke at that zoning hearing, did he not? Both Mr. Post and Mr. Allen spoke at that zoning hearing, did they not?

A. I know that Mr. Post did. I remember that distinctly. *I can't say for a fact that I recall Mr. Allen speaking there.*" (Tr. 1066)

The record, of course, reflects that Mr. Allen did, in fact, speak at that meeting.

51. With respect to the meeting at the Bethesda-Chevy Chase High School Gymnasium, Mr. Timken testified:

"Q. The meeting in the high school auditorium convened at approximately eight o'clock?

A. I would assume it convened at about eight. *I don't recall exactly.*

Q. And do you recall that Mr. Rogers opened the meeting and possibly introduced himself as the president of the club?

A. I would assume so; *but I cannot say I recall that was the first item on the agenda. But that seems logical.*

Q. Now do you recall whether Mr. Rogers continued to preside over the meeting for its entirety?

A. *I cannot recall whether that was so or not.*

Q. Do you recall whether there came a time during the course of the meeting when Mr. David Betts began to preside?

A. I don't know that he presided. I think that he had the floor at some time.

Q. You don't have a recollection that he in fact, later in the evening, presided over the remainder of the meeting?

A. *No, I cannot recall that was so.*" (Tr. 1069-1070)

52. Dr. Mack Lewis Parker, testifying concerning a visit to the Cordell Avenue office, stated:

"Q. Do you recall with whom you talked at that office, sir?

A. *I cannot remember.*"

• • •

"Q. Now, at this time did this individual identify who the people were who were promoting Lakewood Country Club?

A. *I do not remember this as such, no, sir.*" (Tr. 1158)

53. Testifying concerning his understanding of the control and management of the Lakewood Country Club, Dr. Parker testified:

"Q. I see. Now, was it explained to you or did you ever at any time come to know that Mr. Post, Mr. Allen and Mr. Pickett would manage and have control of the Lakewood Country Club?

A. That was not discussed.

Q. It was never discussed with you at any time?

A. *I am not sure of this, sir.*

Q. *Your answer is that you can't recall then?*

A. *Right.*

The Court: I am sorry, I didn't get the first part of it.

Mr. Dyson: I asked him if at any time it was explained to him or if it was his understanding that Mr. Post, Mr. Allen and Mr. Pickett were to manage, operate and control Lakewood Country Club. I understand his answer to be that he could not recall.

The Witness: *I cannot recall whether it was or was not discussed.*" (Tr. 1167)

54. Harry Ator, in testifying with respect to securing Mr. Post's telephone number, stated:

"Q. And you think it not unlikely that it was at one of these meetings that you determined, or ascertained how to locate Mr. Post for your subsequent telephone call?

A. Well, it could have been. *I do not recall.*"

Q. *You have no recollection?*

A. *I have no recollection of how I got his number.*" (Tr. 1202-1203)

55. Testifying concerning that telephone conversation and after having been shown a prior inconsistent report



of an agent of the Federal Bureau of Investigation, Mr. Ator stated:

"Q. I am going to refer you, sir, to the third full paragraph on page 5 and ask you to read that to yourself, sir.

A. Do you want me to read it aloud.

Q. No, no, to yourself, just read it to yourself, sir.

A. Yes, sir.

Q. Now, in 1961, is it fair to say that your recollection of events which took place in that year was better than it is now, in 1966?

A. Of what happened then?

Q. Yes.

A. Oh, certainly.

Q. Does this refresh your recollection that what the young lady said when she answered the telephone, the first time you called was "Country Club Developers"?

A. That is right. That is what is there and that would come nearer being right than what I remember now." (Tr. 1204)

56. Mr. Robert Elder, the turf agronomist, testified:

"Q. Did you develop a grass nursery or a turf nursery adequate to cover the entire 18—the greens on the entire 18-hole golf course?

A. Yes, sir.

Q. And the putting green, the practice playing green, perhaps?

A. Right. *I don't remember whether we had a practice green or not.*" (Tr. 1250-1251)

57. With respect to the size of the Lakewood layout, Mr. Elder testified:

"Q. Did there come a time when you recommended that additional acreage be acquired at the Lakewood Club?

A. I think in the course of the design Mr. Ault came up short or needed some more area to develop the complete 18.

*I don't recall whether he was making improvement in the design or not having room for the complete 18 or not. I don't recall just how it was.*" (Tr. 1255)

58. Testifying with respect to the maintenance and upkeep of the golf course, Mr. Elder stated:

"Q. Mr. Elder, before the recess we were discussing the maintenance and upkeep of the golf course, and I have one question along that line which I neglected to ask you before the recess. Do you recall working with Mr. Oulla, whom you have identified before, in the preparation of such a maintenance and upkeep estimate for the Lakewood Country Club?

A. *I don't recall whether I did or not.*" (Tr. 1262)

59. Finally, with respect to his contract, Mr. Elder testified:

"Q. Do you have a recollection of what organization the contract for the work at the Lakewood Country Club was with?

A. *I am not positive.* I think it was just Lakewood Country Club.

Q. Is it possible that your contract was with Country Club Developers, Inc.?

A. It could have been. *I don't recall the exact name.*" (Tr. 1264)

60. Mr. Eugene Hooper, questioned about his construction activities at Lakewood, stated:

"Q. When did you do that work?

A. *I don't remember the exact dates. It's been a long time.*" (Tr. 1279)

61. With respect to the signatures on some Shore Club Estates documents, Mr. Hooper stated:

"Q. And did you observe the two signatures on that check?

A. L. W. Pickett and Bill Allen.

Q. Were those signed in your presence, Mr. Hooper?

A. *I don't remember.*

Q. Now, Mr. Hooper, referring to Government's 162, the contract for construction, do you recall how you figured your profit on that contract?

A. If I remember, that is on a cost plus 5%.

Q. Cost plus 5%, that is how you figured your profit in coming out with your bid?

A. Yes, sir.

Q. In order to do that, isn't it first necessary to know what the cost is?

A. Sure.

Q. Did you include anything for overhead?

A. *I am not sure.*" (Tr. 1283-1284)

63. Henry Fitzgerald, the golf writer for the Washington Post, when asked about his invitation to become a member of the Advisory Board, stated:

"Q. Then can you fix the approximate time of that phone call?

A. *No, I couldn't. It would be a little hard after all these years.*

Q. Let me see if I can help. Can you fix it in point of time with this exhibit which was shown you earlier? This is Government's Exhibit No. 61, the page from the Washington Post, on July 26, of 1959, in which your name does appear. Can you, using that as a point of reference, fix the approximate time in which you called Nolman?

A. No. *All I can remember* is that after, it appeared once or twice when I called Nolman the first time.

Q. Yes, sir.

A. *I can't recall exactly.*" (Tr. 1321-1322)

64. Mrs. Dorothy O'Neill, a secretary for the Lakewood Club, testified:

"Q. Did you observe while you were there letters going out with someone's signature over the words "Membership Committee"?

A. *I'm sure I don't recall Membership Committee.*"

. . .

"Q. Does that refresh your recollection as to whether or not you had seen letters signed by the Membership Committee?

A. This was a form letter we sent out, right.

Q. I see. Who was the Membership Committee?

A. *I don't recall.*"

. . .

"Q. Was there a Membership Committee?

A. To my knowledge, as I recall there was, *but I couldn't tell you who they were.*"

. . .

"Q. Who was the Screening Committee?

A. I'm sure this I don't know.

Q. Was there a Screening Committee, to your knowledge?

A. *To my knowledge, I still don't know.*" (Tr. 1356-1357)

65. Asked about office procedures, Mrs. O'Neill stated:

"Q. Now, Mrs. O'Neill, do you recall how many copies of that you made at the time that you filled it out originally?

A. As I recall, an original and one carbon.

Q. And that appears to be the carbon. Now what happened to the original and what happened to the carbon, if you recall?

A. *I really don't recall.*" (Tr. 1378)

66. Questioned on cross-examination about commission vouchers and a bank-financed payment plan, Mrs. O'Neill testified:

"Q. Then, cash received, forty-seven, and following that, loaned. To what does that have reference, if you know?

A. *I don't remember, I really don't.*

Q. Did there come a time while you were in the employ of the Lakewood Country Club when a District of Columbia bank made arrangements to finance membership applications?

A. *I'm sorry, I don't recall.*

Q. Do you have a recollection that during the time that you were employed at the Lakewood Country Club that some of the applications for regular membership included credit information which was forwarded to a bank?

A. *I just can't recall anything about the bank or the loans.*" (Tr. 1394)

67. Mr. Thomas G. Peters, testifying about his membership application, stated:

"Q. At that time did he have an application blank with him?

A. As I remember—*my memory is a little hazy as far as this thing is concerned*, but I think he had this with him at that time.

Q. But that document does bear your signature, does it not, Mr. Peters?

A. *Yes, I think so. It certainly looks like it.*" (Tr. 1404-1405)

68. William Hepburn, on cross-examination, stated:

"Q. And you are unable to fix for us the—you are unable to fix for us whether your wife's call to the office of the Lakewood Country Club was before or after the decision by the Zoning Board?

A. *That is correct.*" (Tr. 1652-1653)

69. Testifying further with respect to a meeting at the Lakewood grounds, Mr. Hepburn stated:

"Q. Now are you able to identify any of the people to whom you spoke at that—on any of those occasions?

A. *The one gentleman that I can identify, I am not sure I could identify him now, but I have a vague mental picture of him, was a Mr. Wilhite.*" (Tr. 1658-1659)

70. Mr. Hepburn had testified that he did not sign a petition for the Board of Zoning Appeals with respect to the Glens Hills Club Estates. His testimony on this continues:

"Q. For the change of zoning. Let me show you what has been marked as defendants' exhibit number 28 for identification.

A. Yes, my testimony was I did not recall signing it.

Q. *Now, does this refresh your recollection that you did, in fact, sign a petition to accompany that application?*

A. *Yes, sir. This is my signature.*" (Tr. 1696)

71. Testifying concerning the meeting at Thompson's Restaurant, Mr. Hepburn stated:

"Q. In addition to yourself, who do you recall being present at that meeting?

A. That is rather a tall order because there were a large number of people. Let me say, first of all, that Mr. Post was there. Then there were a number of the advisory board. *And I couldn't say whether all of the board of directors were there, but it was a large group.*

Q. Well—

A. I can tell you who I specifically remember being there.

Q. If you would, please.

A. I recall that Mr. Post was there. I, of course, was there. Mr. Estok was there and Mr. Brownell. And I have difficulty here. I am not sure whether his name is Senator Westland or Eastland. I believe it is Westland.

Q. There is a Senator Eastland and a Congressman Westland.

A. I guess it was Congressman Westland. Excuse me, sir. And there were several others of the board of directors. *I can't recall them.*" (Tr. 1784)

72. Joe Kost, the furniture wholesaler from Texas, testified:

"Q. Did you ever meet with Mr. Post or Mr. Allen or Mr. Pickett, together with either Wayne Freeland or James Hayes?

A. I might have. *I don't recall.*" (Tr. 1789)

73. Jinx Dobbins, his assistant, testified:

"Q. Did you also do the furniture, Mrs. Dobbins, for the Glen Haven Country Club,—

A. Yes, I did.

Q. —in Houston?

When would you have done that? —trying to place it in time as to when you did Mr. Allen's apartment.

A. You know, truthfully, *I really cannot even remember the year*, because we were doing a lot of different—I think it was previous to this, and how long I don't know." (Tr. 1796)

74. Testifying with respect to projections of the Lakewood layout, Mrs. Dobbins stated:

"Q. What was it that you would have done along that line?

Mr. Loewy: Your Honor, could she answer what she did do, rather than what she would have done?

Mr. Bergan: Well, I phrased it kind of badly. That's what I intended to ask her.

The Witness: *Well, I know that my memory is inclined to be pretty bad. But we did do a lot of work. I assume, and I am sure up to a point, that this is what I did.*" (Tr. 1801)

75. As to whether she had met Clark Harmon, Mrs. Dobbins testified:

"Q. How many times would you say you met with Clark Harmon?

A. I'm sorry. *I don't have any idea. I really do not remember.*

Q. You did meet with him on at least one occasion; you recall that?

A. Correct. *But I really don't remember how many.*" (Tr. 1603)

76. Roy Leinster, in testifying concerning some work which he did for other clubs, stated:

"Q. And were you paid for this accounting work at the Indian Ridge Country Club out of Lakewood Country Club funds?

A. *I don't remember.*" (Tr. 1940)

77. Frank Feise, the tennis court contractor, was unable to state whether his contract was bid or negotiated.

"Q. Do you know whether that was negotiated or a competitively bid contract?

A. *I have no knowledge of that—no, sir.*

Q. *Do you recall with whom you negotiated these contracts or with whom you dealt?*

A. *No sir—I do not.*" (Tr. 1942-1943)

78. He was unable to identify some documents from his own office.

"Q. Now let me show you Defendants' Exhibit No. 37 for identification? Do you recognize that?

A. *I don't—no, sir.*

Q. Have you ever seen that before?

A. *I wouldn't know. May have, I may not have. I don't have any recollection.*" (Tr. 1948)

79. Roy Leinster, when his testimony resumed, was asked about the employment of Mrs. Linn:

"Q. Do you have any present recollection as to when, in point of time, Mrs. Linn was employed? And I'm not really asking for a date; but perhaps you can fix it in terms of the time that you became employed on the country club project.

A. *I cannot say. I don't remember when she first came on the scene. I was under the impression that it was in late '59. But it may have been later. I don't remember.*" (Tr. 2026-2027)

80. He was questioned further about the source of payments for trips to other clubs:

"Q. You indicated yesterday, Mr. Leinster, that there came a time when you made a trip to Boston with respect to the Indian Ridge Club, and another time when you made a trip to Pittsburgh with respect to the Eden Roc Club, and a third time when you made a trip to Providence, Rhode Island, for a club known as Quidnessett.

What I want to inquire of you, sir, is your recollection with respect to who paid for those trips. Let's turn first to Eden Roc. Do you recall receiving payment for that trip on a check drawn on an Eden Roc account?

A. *I don't recall. But it might well have been from that source.*" (Tr. 2042)

81. Donald Brimmer, questioned about Carol Kershner, stated:

"Q. If you know, was she paid out of the funds of the Lakewood Country Club?

A. *I couldn't answer that right now.*" (Tr. 2156)



82. Mr. Brimmer, an accountant for Lakewood, was unable even to recall all of the clerical employees.

"Q. I am sorry. Now, the other two ladies, can you recall their names?

A. I can recall the name or the first name of one—I am trying to think of the second name—Polly—

Q. Hawkins?

A. Polly Hawkins. That is correct. *And the other lady, I can't recall her name.*"

"A. No, the lady's name who I can't recall, she worked on a National Cash Register Posting Machine posting the members' accounts.

Q. And Miss Hawkins?

A. I believe Miss Hawkins also worked some on accounts receivable and deposits.

Q. Is the name of the lady who worked on the National Cash Register Bookkeeping Machine Lois Soman-ski? My pronunciation may not be the best.

A. I believe that is correct. I remember the first name very well." (Tr. 2252-2253)

83. Eugene Hooper, recalled, was asked about when he first stopped working at Lakewood.

"Q. I was going to—when did you pull off the job?

A. *I don't remember. I know that we pulled off and then went back to work.*"

"Q. Right away. And when, as you best recall, did you pull off the first time?

A. *I don't remember.*"

"Q. And then how long did you go back for?

A. *I don't remember. In fact, I don't remember how many days we were off. I'm guessing at that.*" (Tr. 2335-2336)

84. Asked about inducements to return to work, Hooper testified:

"Q. Do you recall how much was paid you in order to induce you to go back?

A. *No, I don't remember.*

Q. Do you recall how you received the payment?

A. *No, I don't.*

Q. I mean, if you recall, was a check handed to you, or did you receive something through the mail?

A. I think it was a check handed to me.

Q. By whom?

A. Mr. Allen.

Q. And, as best you can recall, when would you say you pulled off the first time?

A. *I couldn't even guess.*" (Tr. 2337)

85. Asked further about requisitions for payment, Hooper stated:

"The Court: Now take a look at the last requisition there.

Were there any subsequent requisitions filed? In other words, was there any work done by you after that last requisition there?

The Witness: *I don't remember.*" (Tr. 2338)

86. Even the defendant Post had some difficulty recalling all of the facts. Questioned on cross-examination about the Eden Roc Country Club, he testified:

"Q. Who were the stockholders of the Eden Roc Country Club in Pittsburgh?

A. It was a non-profit Pennsylvania corporation, and the members owned a membership certificate. *And I frankly don't recall the names of those people.*" (Tr. 2916)

87. As to his activities in selling memberships, he stated:

"Q. Did you tell the people to whom you sold memberships?

A. I can recall only selling three. *I have no definite recollection of any of those three persons.*" (Tr. 2933)

88. Questioned about the deposit agreement (Defendants' Exhibit No. 44) and its relation to Funkhouser Industries, Mr. Post testified:

"Q. Now, Mr. Post, at the time you drew this check for \$100,000.00, and at the time you entered into this

deposit agreement, defendants' 44, did you contemplate making that disbursement of \$25,000.00 to Funkhouser Industries?

A. Yes, I believe that was contemplated at the same time; yes.

Q. At the same time or before?

A. *I don't recall specifically.*" (Tr. 2969)

89. Asked on cross-examination about a rent deposit, Post testified:

"Q. Was that for one of the buildings on the Lakewood Country Club site?

A. No, it was not.

Q. What building was that for?

A. *I don't remember where it was located.* It was in the downtown Washington area.

Q. It had nothing to do with the Lakewood Country Club, did it, Mr. Post?

A. No." (Tr. 2992)

90. And finally, questioned about some minutes, Post testified:

"Q. Now, Mr. Post, would you turn, please, in Government's 107 to the minutes of April 15th, 1960?

A. Yes, I have it.

Q. Was that meeting, Mr. Post, held at 4910 Cordell Avenue in Bethesda, Maryland?

A. To my recollection, it was either there or at the club site. *I don't specifically* remember which place.

Q. Mr. Van Veen was not there, was he, as the minutes purport to show?

A. I believe he was. *I have no particular recollection* of the meeting myself.

Q. Were you there?

A. Yes.

Q. And Mr. Vranich was not there either, was he, as the minutes purport to show?

A. *I don't know.*

Q. Well, was Mr. Rogers there? He is the third one who is purported to be there?

A. *I have no independent recollection* of the actual meeting, where it was or anything about it particularly.

Q. Mr. Post, when were these minutes drafted?

A. I don't recall any particular time, presumably, within 30 to 60-days. That was the normal course, but *I don't independently recall these particular minutes.*"

\* \* \*

"Q. As a matter of fact, Mr. Post, nobody voted on it, did they?

A. *I have no independent recollection of the meeting itself.*" (Tr. 3012-3015)

91. C. Wayne Freeland testified with respect to visits to the Washington area.

"Q. During the fall of 1958, do you recall whether you came to Washington—and by "Washington" I mean the metropolitan Washington area—on more than one occasion?

A. *I don't know. I came up here once or twice. I am not really certain. It might have been a couple of visits. I think it was one visit. But I don't really know for sure. It was one or two times. I would think, but I don't really know how many.*" (Tr. 3090-3091)

92. Mr. Freeland testified with respect to the preparation of the ads in the Washington newspapers.

"Q. Did you lay out any other of the newspaper ads that appeared in the Washington papers during the promotional campaign?

A. As I recall, I laid out, well, this ad, and maybe one other. *I'm not sure of the number. But I did a total of—to grab a figure, because I'm not certain—maybe a couple of ads. I couldn't, you know, define the number. I did this one, certainly, and possibly another one or so, but I don't know the exact number.*" (Tr. 3097)

93. As to whether he had authorized his attorney to make certain documents available, Mr. Freeland was equally uncertain.

"The Court. The question is do you know whether or not your partner authorized Mr. Mackey—and your partner, now, is that Mr. Hayes?

The Witness. Yes, Jim Hayes; that's right.

The Court. —authorized Mr. Mackey to make available to the defendant certain corporate documents, of the Casa View or some other club.

Mr. Bergan. Or whether he did.

The Court. Or whether you did. Did you or your partner authorize Mr. Mackey?

The Witness. Yes. *If I may, Your Honor, it's hard for me to give a yes or no answer.*

The Court. Now I tell you—

The Witness. Pardon me?

The Court. You just tell us, first, whether or not you authorized, and then we will see if Mr. Bergan desires to go any further.

The Witness. All right. I don't specifically recall that we, you know, authorized him. But we would have. To answer the question, Your Honor, anybody in our organization would have given them any information they wanted. *I don't specifically recall authorizing him, or anybody else.*"

The Court. Do you wish to object—"would have"?

Mr. Loewy. Yes, I object, Your Honor.

The Court. All right; we'll leave it alone.

The Witness. Your Honor, I—

The Court. That's all right.

The Witness. *I just don't remember specifically who I authorized or didn't.*" (Tr. 3098 3099)

94. Freeland testified further with respect to the selection of golf course architects.

"Q. Had you met with other golf architects?

A. *I don't really remember.* I know that Ault was the fellow who was eventually retained; and also he was favored to do the work. He had, you know, a very good reputation in the area. And I think he might have been the only one we talked to, but I'm not certain. I know he was the primary one that we were interested in." (Tr. 3107)

95. Later, with reference to the advertising campaign, Mr. Freeland testified:

"Q. Can you fix the time in reference to when the advertising campaign began?

A. Well, the first time we met with them would have been, I guess, in the fall or late summer of '59.

*I just don't know the exact date. My memory isn't quite that good. That's quite a few years ago."* (Tr. 3114)

96. With respect to a conversation between Freeland and Pickett, Freeland testified:

"Q. Did you also advise them, Mr. Freeland, that by selling more life memberships than they originally planned, that they were doing something that they said they wouldn't do?

A. There again, you know, I don't remember my specific, you know, conversation. The point was brought up that they had enough lifes. But, you know, I guess it would have covered any eventuality. *But I don't remember*, you know, the detailed words or anything like that."

\* \* \*

"Q. And what did he say when you told him you thought they had better stop?

A. Well, if I may, he asked me, you know, if I felt that they had enough lifes. And I said yes, I felt that they did have enough.

Q. And then did he say anything, after hearing your answer?

A. *I don't, you know, recall.* I'm sure he did; *but I don't recall specifically* what he may or may not have said.

Q. Did you ever try to tell Mr. Allen about it?

A. I don't recall that I did, or didn't. I just don't know.

Q. Did you ever try to advise Mr. Post of it?

A. I can only give the same answer. I remember, as I said, I think specifically discussing it with Mr. Pickett. I think he is the one I discussed it with. *I don't recall* specifically discussing it with either of the other fellows." (Tr. 3136-3137)

97. Mr. Robert W. Brownell, testifying with respect to early conversations with Pickett and Allen, stated:

"Q. Did Mr. Pickett or Mr. Allen at the time of this invitation explain to you the concept which they had for the formation of a country club?

A. Yes, they did.

Q. Can you recall, generally, what the explanation was that you were given at that time?

A. *It would have to be very general because it was quite a while ago. But they had with them a drawing or some brochures on a club in Texas, near Houston I believe it was, and their idea was to develop a similar club in the Rockville area. They had the land, and the idea was that they would promote this club as a business venture but they would need some help from those of us who were familiar with golf in this area.*" (Tr. 3198)

98. He had testified to a meeting with the Board of Advisors:

"Q. Do you recall the approximate time of the first such meeting?

A. No, I don't.

Q. Do you recall where it was?

A. *It is so long ago—It was at one of the downtown hotels, if I recall, where there was an actual meeting of the Board of Advisors. I can't recall where it was.*" (Tr. 3199)

99. Similarly as to whether he had ever meet Senator John Marshall Butler at an advisory meeting, he testified:

"Q. And did you ever see Senator Butler at an advisory committee meeting?

A. *I can't recall. I don't think so but I can't recall.*" (Tr. 3207)

100. As to whether he himself had been interrogated by prospective members, he stated:

"Q. And do you recall that members then called you, as a prominent golfer in the area, to find out what the problem might be?

A. *I can't recall, but I would assume that they did; yes.*" (Tr. 3210)

101. When queried about a meeting which he and Foster Shannon attended, he stated:

"Q. As a matter of fact, Mr. Brownell, didn't the promoters continue to tell you that there were 150

or 200 when you and Mr. Shannon raised the question?

A. *I really can't recall. I can't answer that; I just don't recall.*

Q. Were you advised, Mr. Brownell, as an advisor to the club, as to how these promoters were going to make money out of the Lakewood Country Club?

A. I am sure I was; yes. But I can't—There, again, *it has been so long that I can't recall what the details were.*" (Tr. 3213)

102. As to the lease on the Simmons' property, he testified:

"Q. Well, from your conversations with them, as an advisor, did you have the impression that they had a long-term lease or a short-term lease in conjunction with this option to buy?

A. I can't answer. *I just can't recall. I know I was satisfied that things would be all right in that respect.*" (Tr. 3214)

103. Questioned with respect to the minimum spending requirement, he testified:

"Q. Mr. Brownell, prior to your discussions with the promoters when you were advised about the minimum spending requirement, had you been advised of it, or was that the first that you heard of it?

A. Do you mean about the minimum monthly charges?

Q. Yes.

A. Oh, I had read that in the bylaws. That was one of the things that we requested before we got in argument, a copy of the constitution and bylaws.

Q. Then, was it disclosed to you that there would be a minimum spending requirement even before you became an advisor to the club?

A. *I can't recall. I remember reading it in the bylaws but before that I can't recall whether they mentioned it to me or not.*

Q. Well, did you read it in the bylaws, say, in the summer of '59 or closer to the winter of '60?

A. *I can't recall.*" (Tr. 3216-3217)



104. Shown Government's Exhibit No. 154 (a balance sheet), and asked whether it was shown to him at the Ceres Restaurant meeting, he stated:

"Q. I would like to show you a document which is the last page of Government's 154, a balance sheet dated October 31, 1960. I ask you to look at that. In connection with your discussions at Ceres Restaurant, discussing the financial structure and situation of the club, Mr. Post showed you that that day, did he not?

A. *I simply cannot recall.*" (Tr. 3223)

105. Questioned about the meeting at Thompson's Restaurant, he testified:

"Q. And on behalf of the directors, Mr. Hepburn or other directors demanded certain information from Mr. Post, did they not?

A. Yes.

Q. For instance, they demanded information about the various contracts which were outstanding involving Lakewood Country Club, did they not?

A. *I can't recall.* I am sure they probably did but I can't recall specifically what the questions were that they asked.

Q. Do you recall their demanding additional financial information, that is additional to what they had received previously?

A. *I can't recall.* I would imagine so; yes." (Tr. 3225-3226)

106. The Court will recall that Mrs. Norma Matthews, President of Washington Intelligence Bureau, testified to three groups of mailings; one in the fall of 1959, one in the spring of 1960 and one in the fall of 1960. On cross-examination, she misidentified what had been mailed and it was necessary for the defendants to call Mr. William Stant of Stuart Lithograph Company to set the record straight. See Tr. 3238, *et seq.*

107. Marvin Simmons, the landowner, testified:

"Q. At that time did you meet with all of these three or with only some of them, if you recall?

A. *Well, I don't know, there were so many meetings. I imagine we all did meet together sometime or other.*"  
(Tr. 3287-3288)

108. He further testified:

"Q. Did you inquire of Mr. Post—let me rephrase that.

You did inquire of Mr. Post where he was going to get the money to put this operation over, did you not?

A. *Oh, I do not remember the details.*" (Tr. 3313)

109. Clark Harmon, the golf club architect, testified to the original square footage of the clubhouse:

"Q. Mr. Harmon, let me show you—hand you back again—Defendants' Exhibit No. 255, and invite your attention to the first sentence of the second paragraph, and ask you if you can tell the size, square footage, of the plans as they were originally drawn by you.

A. *I can't recall the original square footage.* The project ended up with approximately 34,000 square feet.

After we signed the contract and we were in the design stage of the building, it is my recollection that we were always working in the vicinity of above 25,000 square feet on the size of this building.

Now we had talked, previous to the signing of this contract, about the size of the country clubs. And this is where this figure arose in this contract that states \$283,000.

Now when this project ended, 34,000 square feet still came out to about \$13 a foot, which was the determining factor. But nowhere did we design a building that was supposed to cost \$283,000. We were always designing above that.

Q. Mr. Harmon, at the time these plans were drawn—and I am now talking about 1959—was this a large clubhouse, by metropolitan Washington area standards?

A. Oh yes. We felt that it was above average, size-wise.

Q. And was this, even as originally drawn, that it would have been above average?

A. I think so, in my opinion, predicated on the golfing members. There was only an 18-hole golf course here at the time.

The Court. Haven't you testified, Mr. Harmon, that you cannot recall the square footage as originally planned?

The Witness. *No, sir, I can't exactly.*" (Tr. 3360-3361)

110. As to the location of the swimming pools, he testified:

"Q. Did there come a time when the location of the bath house had to be revised because of sanitary standards and requirements of the Montgomery County board?

A. *I don't recall.*" (Tr. 3362)

111. G. Gerald Nixon was asked on cross-examination to relate the substance of a conversation. His testimony follows:

"Q. Now, Mr. Nixon, during your trip to Pioneer Point, do you recall discussing with Mr. Allen where they were getting the money to finance all those other clubs?

A. I didn't enter into any financial discussions at all. I can't remember any such discussions. *He may well have asked* us how much we thought it would cost to build a golf course, among other things.

Q. I don't mean about you and Mr. Snead putting up any money. I mean, did you ever inquire of Mr. Allen where he was getting the money to start other country clubs after Lakewood?

A. *It doesn't stick out in my mind.* I may very well have.

Q. Do you recall whether or not on a trip to Pioneer Point you asked Mr. Allen something to the effect, doesn't it entail a lot of cash to start a club like this?

Mr. Bergan: Excuse me. To start a club like what?

Mr. Loewy: Like Pioneer Point.

By Mr. Loewy:

Q. And Mr. Allen answered that to you in some way?

A. *I can't say that I asked him to name any specific amount.* We may have had general discussion about it.

Q. Yes, that is what I mean, that you asked him a question. Not the amount, but didn't you ask him the question, didn't it take a lot of money to start one of these things, and where are you getting the money?

A. I don't think I asked him where he was getting the money. I didn't figure that was any of my business.

Q. Did you discuss that with him though, if you recall?

A. I probably did. I mean, specifically, *I can't say word for word anything that I said.* There was only a general discussion on construction costs and things of that nature." (Tr. 3460-3462)

112. Shown his prior grand jury testimony, he testified:

"Q. The question was, when Mr. Allen said to you, "Well, if it doesn't go, we have just lost \$25,000," did you say anything to him?

A. Without referring to it, well I just said, "I hope you've got some money, because it might not work"—or something to that effect.

Q. And did Mr. Allen say anything to that comment, as you recall?

A. *I don't recall.*" (Tr. 3489-3490)

113. Even the defendant Allen had difficulties. Interrogated by Mr. Barnes about a 1959 telephone conversation, he stated:

"Q. *Do you recall* in the fall of '59 having a conversation with Mr. David Betts on the telephone?

A. *No, I don't.*

Q. You don't recall Mr. Betts placed a call to you at your apartment in Arlington Towers?

A. In the fall of '59?

Q. Yes, in the fall of '59.

A. *No, I do not recall it.*

Q. The fall of '60, move it up one year to the fall of '60?

A. *I do not recall the telephone conversation.*

Q. Well, in the summer or early fall of 1960 had construction stopped on the Lakewood Country Club clubhouse?

A. Construction stopped at a time and then started back again and then, I think, stopped again.

Q. Do you recall receiving any inquiries or calls from members as to why the construction stopped?

A. I possibly did but *I do not recall the conversations.*

Q. And *you don't recall* any telephone conversations with David Betts, specifically, relating to how many life memberships had been sold in the fall of 1960?

A. *No, I do not.*" (Tr. 3630-3631)

114. Similarly, the defendant Pickett had a memory lapse:

"Q. Now, you proposed as directors, did you now, Mr. Pickett, for the Lakewood Country Club, Mr. Rogers, again?

A. Yes, that is correct.

Q. And Mr. Van Veen again?

A. Yes. That is correct.

Q. And Mr. Vranich again?

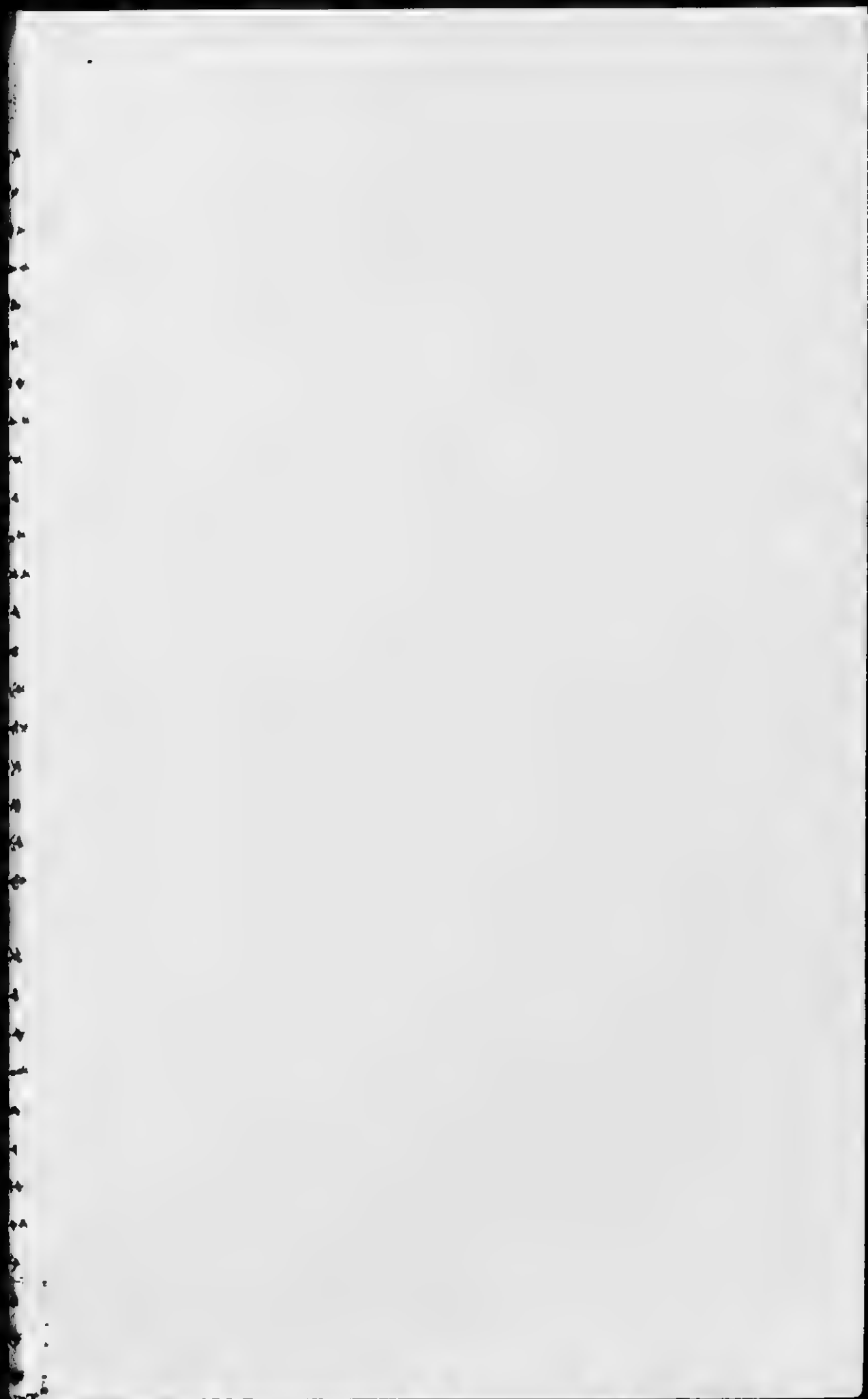
A. Wait, *I can't recall whether they were proposed on our new slate or not.* I assume that they were, but I just don't recall.

Q. Isn't it a fact, Mr. Pickett, that Mr. Vranich told you specifically that he didn't want anything else to do with it before his name was proposed a second time?

A. *I can't recall.*"

"Q. Did you—you testified to certain proceedings at the meeting. Did you advise the members there or did Mr. Rogers advise them that five or six out of the nine directors whom you proposed were complimentary members?

A. *I don't recall that was said, no.*" (Tr. 3706-3707)



881

CONSOLIDATED BRIEF FOR APPELLANTS

IN THE  
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Nos. 20861, 20862, 20863

TROY V. POST, JR., *Appellant*

v.

UNITED STATES OF AMERICA

BILL M. ALLEN, *Appellant*

v.

UNITED STATES OF AMERICA

LEBOY W. PICKETT, *Appellant*

v.

UNITED STATES OF AMERICA

Consolidated Appeals from Judgments of the United States  
District Court for the District of Columbia

United States Court of Appeals

for the District of Columbia Circuit

FILED JUN 15 1967

*Nathan J. Paulson*  
CLERK  
Of Counsel:

WILLIAMS & CONNOLLY  
1000 Hill Building  
Washington, D. C. 20006

RAYMOND W. BERGAN  
1000 Hill Building  
Washington, D. C. 20006  
*Counsel for Appellants  
Post and Allen*

THOMAS R. DYSON, JR.  
1000 Hill Building  
Washington, D. C. 20006  
*Counsel for Appellant  
Pickett*

## STATEMENT OF QUESTIONS PRESENTED

In the opinion of the appellants, the following questions are presented in these consolidated appeals:

1. Whether, in a mail fraud case, the Court erred in establishing a cutoff date and excluding evidence of the defendants' actions and efforts after that date to secure additional financing and to reacquire assets necessary to the successful operation of the enterprise.

2. Whether, in a mail fraud case, the Court may properly instruct the jury that, if they find the defendants to have been the promoters of a golf and country club organization, then, as promoters, the defendants occupied a fiduciary relationship to the club and to the members and prospective members thereof; that they (the defendants) were bound to exercise the utmost in good faith and fully disclose all material facts including any interest which they had in the club; that as promoters they could not benefit by any secret profits at the expense of the club and its members; and that any violation of this fiduciary duty would be an act of fraud.

3. (a) Whether, in the circumstances of this case, the Court erred in giving the "Allen charge".

(b) Whether the form of "Allen charge" given by the Court was proper.

4. Whether the Court erred in excluding from evidence an agreement signed by the defendants and representatives of the alleged victims, in settlement of a civil proceeding, in which it was agreed that all sums of money disbursed to or for the benefit of the defendants should "be considered to be full and reasonable consideration for any and all services" rendered by the defendants.

5. Whether the indictment should have been dismissed for want of timely prosecution.



## INDEX

	Page
Statement of Questions Presented .....	i
Jurisdictional Statement .....	1
Statement of Points .....	2
Statutes Involved .....	3
Statement of the Case .....	3
Summary of Argument .....	13
<b>Argument</b>	
1. By Establishing a Cutoff Date of March 31, 1961, the Trial Court Erroneously Excluded Evidence Pertinent to the Appellants' Good Faith .....	16
2. The "Promoter Instruction" Given by the Trial Court Was Error .....	25
(a) The "promoter" concept has no proper place in this case .....	28
(b) The Instruction misallocates the burden of proof in a criminal case .....	31
3. The Court Erred in Giving the "Allen" Charge..	33
4. The Indictment Should Have Been Dismissed for Want of Timely Prosecution Occasioned by Un- necessary and Unjustifiable Pre-Indictment Delay	38
5. The Exclusion of Defendants' Exhibit 30 Was Error .....	45
Conclusion .....	50
Appendix A .....	1a
Appendix B .....	1b

## TABLE OF AUTHORITIES

### CASES:

<i>Allen v. United States</i> , 164 U.S. 492 (1892) .....	34
<i>Barr v. N.Y., L.E. &amp; W.L.L. Co.</i> , 125 N.Y. 263, 26 N.E. 145 (1891) .....	30
<i>Bollenbach v. United States</i> , 326 U.S. 607 (1946) ....	33

	Page
* <i>Bradford v. United States</i> , 129 F. 2d 274 (5th Cir. 1942) .....	33
<i>Chapman v. California</i> , 386 U.S. 18 (1966) .....	25
<i>Commonwealth v. Tuey</i> , 18 Cush. 1 (Mass. 1851) .....	34
<i>Dickerman v. Northern Trust Co.</i> , 176 U.S. 181 (1900) .....	28
<i>Ecklund v. United States</i> , 159 F. 2d 81 (6th Cir. 1947) .....	48
* <i>Epstein v. United States</i> , 174 F. 2d 754 (6th Cir. 1949) .....	15, 31
<i>Fahy v. Connecticut</i> , 375 U.S. 85 (1963) .....	25
<i>Firestone Tire &amp; Rubber Co. v. Hillow</i> , 65 A. 2d 338 (D.C. Mun. App. 1949) .....	49
<i>Foster v. Seymour</i> , 23 Fed. 65 (C.C.S.D.N.Y. 1885) ..	29
<i>Frank v. United States</i> , 220 F. 2d 559 (10th Cir. 1955) ..	33
<i>Fulwood v. United States</i> , — U.S. App. D.C. —, 369 F. 2d 960 (1966) .....	15, 33
<i>Getchell v. United States</i> , 282 F. 2d 681 (5th Cir. 1960) .....	16
<i>Green v. United States</i> , 309 F. 2d 852 (5th Cir. 1962) ..	35
<i>Hanrahan v. United States</i> , 121 U.S. App. D.C. 134, 348 F. 2d 365 (1965), opinion on remand 255 F. Supp. 957 (D.D.C. 1956), aff'd <i>sub nom</i> Tynan v. United States, Nos. 20335, 20394, 20395 (Apr. 5, 1967) .....	15, 41, 42, 43, 46
<i>Hedgepeth v. United States</i> , — U.S. App. D.C. —, 365 F. 2d 684 (1966) .....	45
<i>Hoffman v. United States</i> , 297 F. 2d 754 (5th Cir. 1962) .....	34
<i>Jackson v. United States</i> , 122 U.S. App. D.C. 124, 351 F. 2d 821 (1965) .....	44
<i>Lakewood Country Club, Inc., et al. v. Troy V. Post, et al.</i> , Civil Action 806-61 .....	11
* <i>Lefkowitz v. United States</i> , 230 Fed. 664 (2d Cir. 1921) .....	14, 16, 22, 23, 24
* <i>Little v. United States</i> , 73 F. 2d 861 (10th Cir. 1934) ..	14, 16, 17, 23
<i>Mackay v. United States</i> , 122 U.S. App. D.C. 97, 357 F. 2d 704 (1965) .....	41
<i>Mann v. United States</i> , 113 U.S. App. D.C. 27, 304 F. 2d 394 (1962) .....	39
<i>McCandless v. Furland</i> , 296 U.S. 140 (1935) .....	29
<i>McCracken v. Robinson</i> , 57 Fed. 375 (2d Cir. 1893) ..	30
<i>McFarland v. United States</i> , 85 U.S. App. D.C. 19, 174 F. 2d 638 (1949) .....	33

\* Cases and authorities chiefly relied upon.

# Index Continued

iii

	Page
<i>Miller v. United States</i> , 120 F. 2d 968 (10th Cir. 1941)	32
<i>Milton S. Kronheim &amp; Co. v. United States</i> , 163 F. Supp. 620 (Ct. Cl. 1954)	49
<i>Nickens v. United States</i> , 116 U.S. App. D.C. 338, 323 F. 2d 808 (1963)	40
* <i>Northridge Corp. Sec. No. 1 v. 32nd Ave. Constr. Corp.</i> , 286 App. Div. 422, 142 N.Y.S. 2d 534 (1st Dept. 1955)	30
<i>Old Dominion Copper Co. v. Bigelow</i> , 188 Mass. 315, 74 N.E. 653 (1905)	30
<i>Old Dominion Copper Co. v. Lewisohn</i> , 148 Fed. 1020 (2d Cir. 1906), aff'd 210 U.S. 206 (1908)	30
<i>Petition of Provoo</i> , 17 F.R.D. 183 (D. Md. 1955), aff'd 350 U.S. 857 (1955)	40
<i>Powell v. United States</i> , 122 U.S. App. D.C. 229, 357 F. 2d 704 (1965)	41
<i>Ross v. United States</i> , 121 U.S. App. D.C. 233, 349 F. 2d 210 (1965)	40, 41
* <i>Shushan v. United States</i> , 117 F. 2d 110 (5th Cir. 1941)	33
<i>State v. Pyle</i> , 143 Kan. 772, 57 P. 2d 93 (1936)	34
<i>State v. Randall</i> , 137 Mont. 534, 353 P. 2d 1054 (1960)	34
<i>State v. Thomas</i> , 86 Ariz. 161, 342 P. 2d 197 (1959)	34
<i>Stewart v. United States</i> , 330 Fed. 769 (8th Cir. 1924)	37
<i>Taylor v. United States</i> , 99 U.S. App. D.C. 183, 238 F. 2d 259 (1956)	40
* <i>United States v. Brandt</i> , 196 F. 2d 653 (2d Cir. 1952)	16, 23, 32
<i>United States v. Jeremiah J. Kelley</i> , 65 Cir. 256 (U.S. D.C., S.D.N.Y. 1961)	1b
* <i>United States v. Parrott</i> , 248 F. Supp. 196 (D.D.C. 1965)	15, 41
<i>United States v. Rodgers</i> , 289 F. 2d 433 (4th Cir. 1961)	35
<i>United States v. Shavin</i> , 267 F. 2d 647 (7th Cir. 1951)	32, 48
<i>Vinton E. Lee, et al. v. Troy V. Post, et al.</i> , Civil Action 1157-61	11
<i>Ward v. United States</i> , 120 U.S. App. D.C. 311, 346 F. 2d 423 (1965)	41
<i>West v. Smith</i> , 101 U.S. 263 (1879)	49
<i>West v. United States</i> , 68 F. 2d 96 (10th Cir. 1923)	33

\* Cases and authorities chiefly relied upon.

	Page
<i>Williams v. United States</i> , 119 U.S. App. D.C. 190, 338 F. 2d 530 (1964) .....	36
* <i>Worthington v. United States</i> , 64 F. 2d 936 (7th Cir. 1933) .....	16, 46, 47, 48
 STATUTES AND RULES:	
15 U.S.C. § 77q(a) .....	41
18 U.S.C. § 371 .....	1, 3
18 U.S.C. § 1341 .....	1, 3
18 U.S.C. § 3500 .....	15
29 U.S.C. § 1291 .....	2
Rule 23, F.R.Civ.P. ....	45
 ARTICLES AND TREATISES:	
Brockelbank, <i>The Compensation of Promoters</i> , 13 Ore.L.Rev. 195 (1934) .....	30
*Clark, <i>Progress of Project Effective Justice—A Report on the Joint Committee</i> , 47 J.Am.Jud. Soc'y 88 (1963) .....	34
Dewing, <i>Financial Policy of Corporations</i> , (5th Ed. 1953) .....	28
Fletcher, <i>Cyclopedia of Corporations</i> .....	29
Isaacs, <i>The Promoter; A Legislative Problem</i> , 38 Harv. L. Rev. 807 (1925) .....	28, 29
Little, <i>Promoters' Frauds in Organization of Corporations; The Old Dominion Copper Mining Cases</i> , 5 Ill. L. Rev. 87 (1910) .....	30
Mathes & Devitt, <i>Federal Jury Practice &amp; Instructions</i> .....	35
McGowan, <i>Legal Controls of Promoters' Profits</i> 25 Geo. L. J. 269 (1939) .....	30
*Mosbacher, <i>Corporate Right of Action for Promoters' Fraud on Future Shareholders</i> , 22 Cal. L. Rev. 326 (1933) .....	31
*Note, <i>Due Process, Judicial Economic and the Hung Jury: A Reexamination of the Allen Charge</i> , 54 Va. L. Rev. 123 (1967) .....	15, 36
Weston, <i>Promoters' Liability; Old Dominion v. Bigelow</i> , 30 Harv. L. Rev. 39 .....	30
Wigmore, <i>Evidence</i> (3d Ed. 1940) .....	49

\* Cases and authorities chiefly relied upon.

IN THE  
**United States Court of Appeals**

FOR THE DISTRICT OF COLUMBIA CIRCUIT

---

Nos. 20861, 20862, 20863.

---

TROY V. POST, JR., *Appellant*

v.

UNITED STATES OF AMERICA

---

BILL M. ALLEN, *Appellant*

v.

UNITED STATES OF AMERICA

---

LEROY W. PICKETT, *Appellant*

v.

UNITED STATES OF AMERICA

---

Consolidated Appeals from Judgments of the United States  
District Court for the District of Columbia

---

**CONSOLIDATED BRIEF FOR APPELLANTS**

---

**JURISDICTIONAL STATEMENT**

The defendants, Troy V. Post, Jr., Bill M. Allen and Leroy W. Pickett, were indicted on June 23, 1964, for conspiracy, 18 U.S.C. § 371 and 19 substantive counts of violating the mail fraud statute, 18 U.S.C. § 1341. Following

a 34 day District Court trial presided over by the Honorable William B. Jones, the defendants were each convicted of conspiracy and 13 substantive counts. After denying appropriate motions, Judge Jones imposed prison sentences of 16 to 48 months for the appellant Post, of which the Court directed 6 months to be served, and 12 to 36 months for appellants Allen and Pickett, of which the Court directed 4 months to be served. No fines were imposed. Timely notices of appeal were filed. This Court has jurisdiction pursuant to 28 U.S.C. § 1291.

By order dated April 3, 1967, this Court directed the three cases consolidated for all further proceedings.

#### STATEMENT OF POINTS

1. The Court erroneously restricted proof at trial in that it established a cutoff date of March 31, 1961 and precluded the defendants not only from showing their efforts after that date to secure additional financing, but also excluded evidence of their successful efforts to reacquire for the Club monies loaned to another but related enterprise.

2. The Court erred in giving a so-called "promoter instruction", the effect of which was to tell the jury that, if it found the appellants to be the promoters of the Lakewood Country Club, they then occupied a fiduciary position to the Club and to its members and that any violation of such fiduciary position would be an act of fraud.

3. The Court erred in giving the "Allen charge".

4. The Court erred in excluding Defendants' Exhibit 30, an agreement between the defendants and representatives of those allegedly defrauded, such agreement recognizing that all sums disbursed to or for the defendants were "full and reasonable consideration for any and all services heretofore rendered by them".

5. The Court erred in not dismissing the indictment for want of timely prosecution.

**STATUTES INVOLVED**

18 U.S.C. § 371, reads, in pertinent part, as follows:

"If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than \$10,000 or imprisoned not more than five years, or both."

18 U.S.C. § 1341 reads, in pertinent part, as follows:

"Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Post Office Department, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined not more than \$1,000 or imprisoned not more than five years, or both.

**STATEMENT OF THE CASE**

The appellants Troy V. Post, Jr., Bill M. Allen and Leroy W. Pickett each are here appealing from convictions on multiple mail fraud counts arising from the organization, financing, construction and operation of the Lakewood Country Club, located in the Rockville, Maryland area approximately 30 minutes ride from downtown Washington. The appellants, each of whom were young men at

the time of their involvement in the events which gave rise to their conviction, had conceived the idea for the Lakewood Country Club and had brought it into existence. Financing difficulties, the origin and extent of which were the cause of considerable controversy in the District Court, led directly to their ouster from control, and their disassociation from any future operations of the club, and indirectly to the indictment which brought about their convictions which are here on appeal. While, as in most mail fraud cases, it was hotly contested as to whether the Lakewood Country Club was a legitimate business enterprise which went awry through a mixture of overenthusiastic promotion, poor business judgment and bad luck or whether it had been originated by the defendants as part of a scheme to defraud prospective members, the evidence adduced by the Government, if credited by the jury, would have supported the trial verdict. Accordingly, in this Court, the appellants make no assertion that the jury verdicts against them were not supported by adequate evidence. They do assert, however, that, by virtue of certain trial rulings, the jury was precluded from hearing critical evidence on their behalf and that, by virtue of certain instructions, the jury was inadequately advised with respect to the necessary burden of proof and the criminal intent which must have been found to be present prior to conviction. The significance of these asserted errors looms large in view of the fact that the jury spent more than 20 hours in deliberation over a period of four days, that the jury returned once to have the entire of the Court's Instructions read to them and that they later reported that they were unable to arrive at a verdict.

In view of the fact that the appellants do not assert the insufficiency of the evidence against them, we do not set out in this Statement of the Case a completely detailed recital of the evidence adduced by both the Government and the defense during a 34 day trial, extending over an



eight-week period, in which hundreds of exhibits were introduced by each side. We set out in this section of the Brief, what is meant to be only a fair summary of the evidence, leaving to the appropriate section of the Argument a more detailed recital of such evidentiary facts deemed required for that particular point being made.

Appellant Post was born in Dallas, Texas in 1930, is married and the father of three children (T. 2427, 2428).<sup>1</sup> He graduated from primary and secondary schools in the Texas area (T. 2428), attended college in Dallas, graduated with a law degree in 1955, and is a member of the Bar of the District of Columbia and the State of Texas (T. 2428). Appellant Allen was born in 1927, has a high school education (T. 4239), is married and the father of two children (T. 3522). Appellant Pickett was born in 1930, has a high school and junior college education (T. 3657), is married and the father of two children (T. 4239). Although Pickett was originally from the Washington, D.C. area (T. 3657), Post and Allen first came to the District of Columbia in approximately 1956 or 1957 (T. 2430, 3522). Both Post and Allen at that time were working with and for an organization known as American Investment and Income Fund, a mutual fund, owned by Troy V. Post, Sr. (T. 2430, 3522). Post, Jr. was doing legal work and Allen was doing promotional and sales work. The three appellants, Post, Allen and Pickett, met originally in 1956 or 1957 (T. 2432, 2523), through their association with a securities company in the Washington, D.C. area.

The District of Columbia, in common with many other areas of the country at or about that time, was undergoing a golf explosion (T. 3198) and the appellants had the idea of forming, organizing and owning a golf and country club complex which they would own, which would be man-

---

<sup>1</sup> By prior order of the Court, the Joint Appendix is being printed after both Briefs have been filed. Necessary Joint Appendix references will be made in a sufficient number of Briefs prior to submission.

aged professionally and the profits of which would enure to them (T. 2486-2487, 3542-3543). Through such firms as Shannon & Luchs, Dixon & Co. (T. 2468), and others (T. 2438, *et seq.*, 3660), they sought a tract of land adequate in size and sufficient in geographic features within close proximity of the District of Columbia on which to locate such club. They finally located 200 acres of such land in Montgomery County, Maryland on property, the largest part of which was then owned by Marvin Simmons (T. 2470, D. Ex. 1). They acquired an option to purchase this land, with a right to lease the land at a later date, and ultimately to purchase it (T. 2477, *et seq.*; D. Ex. 223). They subsequently acquired additional acreage known as the Carter tract and the Viers tract (T. 2422, *et seq.*).

It has been indicated that the defendants conceived of the idea of a professionally built and run club. This is not to say that they, themselves, had any such professional experience. They proposed to hire the necessary *professional* personnel to make the operation work. To this end, they retained Edward Ault, a well-known golf-course architect, (T. 3200), to design the 18 hole golf course (T. 3399); Clark Harmon, a man with some experience in golf clubhouses (T. 3349-50), to design the clubhouse and bathhouse complex (T. 3350, *et seq.*; D. Ex. 255, 263); Thomas Carroll and Sons to construct the golf course (T. 1235, *et seq.*) D. Ex. 24, 280), with special instructions to be completed by a given time; contractors for tennis courts (T. 1941-3), pools (T. 2642), and clubhouse (G. Ex. 162; D. Ex. 25, at T. 3397); Sam Snead to run the golf pro shop (T. 3418, D. Ex. 243).

Post and Allen had previously been associated as East Coast franchisees of the Sam Snead Golf Schools (T. 2431), and, as a result of this and other associations, among the experts they had come to know were Wayne Freeland and James Hayes (T. 2434), who had previously operated country clubs in the Dallas and Houston areas, Glenview, Pine Lake, Casa View and Brookhaven (T. 2440,

2483). They sought assistance from Freeland and Hayes with respect to the promotion of this country club in the Washington, D.C. area. In June of 1959, Post, Allen and Pickett met with Freeland and Hayes in Houston and agreed to pay Freeland and Hayes a commission on membership sales in exchange for their advice on promotion and operation (D. Ex. 227). Freeland and Hayes were ultimately to receive approximately \$100,000 under this contract (G. Ex. 183; G. Ex. at T. 3123). With the help of Freeland and Hayes, sales and promotional kits were prepared (T. 2469, 2482), newspaper advertisements were planned, and direct mail programs originated (T. 3096, *et seq.*, D. Ex. 61-79, 80; D. Ex. 333, 334).

In May of 1959, Post, Allen and Pickett appeared before the Zoning Commission of Montgomery County and acquired a special use exemption to permit a country club to be built in the area (D. Ex. 3; T. 2490, *et seq.*).

The defendants caused four corporations to be formed by Corporation Trust Company (G. Ex. 92, 93, 94, 95; T. 287). These corporations were P.A.P. Inc., Country Club Developers, Inc., Lakewood Management Corp., and Lakewood Country Club, Inc. Each of the corporations was organized in the State of Maryland and Lakewood Country Club, Inc. was organized as a "non-stock, non-profit corporation", "no part of the net earnings [of which] shall enure to the benefit of any director or member". (G. Ex. 93). P.A.P., Inc. was formed to take the assignment of the land option from Marvin Simmons, to then become the lessee of the property and, in turn, to sub-lease it to the club (T. 2529). Lakewood Management Corp. was to manage the club (T. 2531). Lakewood Country Club, Inc. was formed to take advantage of the Montgomery County liquor regulations and to be the sub-lessee of the property (T. 2530). Country Club Developers, Inc. was the prime contractor for the construction of the club facilities (T. 2531), under contract with Lakewood Management Corp.

It is undisputed that the defendants owned all corporations.

A supervisory board was selected consisting, among others, of Mayor Alexander Green of Rockville, Maryland, Senator John Marshall Butler, Washington Congressman Jack Westland (a former U.S. Amateur Golf Champion), Sam Snead, D.C. Commissioner Robert McLaughlin, the editors of two Montgomery County newspapers, Ralph Guglielmi, Ralph Bogart and Robert Brownell—local amateur golfers of some note, and others (T. 2565). Although the supervisory committee was generally non-functional, its individual members were consulted from time to time with respect to matters within their individual spheres of competence. A contract was signed with Sam Snead Enterprises, by which Snead agreed to operate the pro shop and make available a resident golf professional when the club was fully operational.

In the Summer and Fall of 1959, and later, the promotional phase of the club got under way. Direct mail advertisements were sent to tens of thousands of persons in the Washington, D. C. and Montgomery County areas; full and half page newspaper ads appeared; and a sales office was opened in Bethesda (G. Ex. 61-79).

The promotional campaign promised a "limited number" of life memberships at a cost of \$1,000, such memberships being promised that they would not have any further dues or assessments. This "limited number" was variously set at between 100 and 300 (T. 145, 252, 562, 758 and others). A subsequent audit reflected over 1,000 life memberships as having been sold. (G. Ex. 570, 35-36). Regular memberships, which cost \$300, were to pay monthly dues following their admission to membership. There was direct testimony that each of the appellants Post, Allen and Pickett told at least one prospective member about the limitation of life memberships and that such life memberships would have no further charges.

Each of the defendants, testifying on their own behalf, stated that they had been led to believe that 100-300 life members was the most that they could hope to attract during the promotional phase of the membership campaign (T. 2614-16, 3547-8, 3561-67, 3668). In fact, the promotion was an instant and spectacular success and the defendants raised their sights and accepted more life members. As they testified, their own reason for so doing was their belief that the club could be sustained by a minimum number of monthly dues-paying members, (T. 2872, 3571), and profits from the restaurant, bar and other available facilities. The by-laws of the club, circulated to all members in early 1960 (T. 1452), contained a proviso that the Board, all of whom at that time had been appointed by the defendants could "prescribe minimum spending requirements for any class or classes of members" (G. Ex. 147). The defendants each testified that they did not consider it would be necessary to invoke such a requirement (T. 2868, 3571, 3669), and in fact it was never invoked during their operation of the club. Although the testimony was in conflict, the jury could have found that some prospective life members were told there would be no such charge. None were affirmatively told of it.

As previously indicated, four separate corporations had been established with Post, Allen and Pickett as the sole owners of each. The land in question was leased from Marvin Simmons by P.A.P., Inc., and, in turn, leased by P.A.P. to Lakewood Country Club at a significant profit (G. Ex. 1783). Likewise, contracts were entered into between Lakewood Country Club, on the one hand, and Country Club Developers, on the other, for the construction of a golf course, swimming pools, tennis courts, and a clubhouse and bathhouse complex. Country Club Developers sub-contracted with other contractors in the Washington, D. C. area to plan and lay out a golf course, originally of 18 holes, and then of 27 holes, and then to build it; for

swimming pools, tennis courts, and a clubhouse and bathhouse complex. Each of these sub-contract arrangements reflected a significant profit to Golf Club Contractors as the prime contractor (G. Ex. 183). Post, Allen and Pickett were likewise receiving, in varying amounts, management and advisory fees, sales commissions and salaries, pursuant to various intracorporate contract arrangements from Lakewood Country Club, Inc., Country Club Developers, Inc. or P.A.P., Inc. Government Exhibit 183 fixed the total amount received by Post, Allen and Pickett personally in a twenty month period as in excess of \$200,000.

Construction began at the golf club site and, with the exception of the clubhouse, was virtually completed in the Fall of 1960. The golf course was opened for play with an exhibition between Sam Snead and Arnold Palmer (T. 2902-2903). The clubhouse itself was approximately 60 to 80% completed. The Government's evidence, if credited by the jury, would have permitted a conclusion that the members and prospective members were not aware of the total ownership interest of the defendants in the entire club complex and the extent of the profits which they and others were receiving.

Some, or all, of the defendants had interests in other operations in the East—Eden Rock Country Club in Pittsburgh; Quidnessett Golf and Country Club in Rhode Island; Pioneer Point Association and Shore Club Estates on the Eastern Shore of Maryland. The Government's evidence reflected that some of the monies collected during the Lakewood promotional campaign was advanced to these and other organizations (G. Ex. 183). Included in these advancements was an approximately \$63,000 figure to Golf Contractors, Inc., a Texas corporation, reflecting a loan for the reconstruction of a golf course in Texas. The golf course in Texas was one in which Freeland and Hayes had a controlling interest.

In the Fall of 1960, a group of members became concerned about what was to them a lack of progress being made in the construction of the clubhouse, construction having come to a virtual halt (T. 1462). These members held a series of meetings among themselves (and some with the defendants) during which they complained bitterly about the lack of progress and laid plans to attempt to rectify the situation. There were a series of meetings in the early winter of 1961, during which there was an effort to work out an accommodation between the insurgent members of the club and their lawyers and the defendants and their lawyers (T. 1470 *et seq.*). These meetings were to no avail, and in March of 1961 a law suit was filed in the United States District Court for the District of Columbia by these insurgent members, which had for its purpose, first, the appointment of a conservator to manage all the affairs of the club, second, the recapture or reacquisition of funds which the insurgent members asserted had been improperly utilized by the defendants, and, ultimately, the ouster of the defendants from any further operations, management or control over the club. *Lakewood Country Club, Inc., et al. v. Troy V. Post, et al.*, Civil Action 805-61; *Vinton E. Lee, et al. v. Troy V. Post, et al.*, Civil Action 1157-61. The matter came before the Honorable Leonard P. Walsh, who, on March 31, 1961, appointed Vinton Lee, a member of the Bar of the District of Columbia and a Certified Public Accountant, as conservator of all of the corporate organizations involved in the Lakewood Country Club, and barred the defendants from further operation of the club.

Litigation continued during 1961, during which time the defendants, notwithstanding their ouster from the club complex, continued their efforts to secure the additional financing which would have been necessary to complete the country club complex (T. 3514 *et seq.*, 3649 *et seq.*). The District Court barred any evidence with respect to actions



taken by the defendants following March 31, 1962, but detailed offers of proof were made which included negotiations with one Warren Lockwood, a Montgomery County realtor, to take over the defendants' position in the club and operate it as the defendants would have operated it (T. 3514-3516). These efforts also included the successful reacquisition of approximately \$90,000 from Golf Contractors, Inc., money which had been loaned pursuant to previous agreement (T. 3649-3654). The litigation was terminated in the Spring of 1962 with a Consent Order by which the defendants gave up all right, title and interest to the club and any of the corporations related thereto and which contained the following paragraph:

*"4. It is agreed that all sums heretofore disbursed to or for the benefit of Troy V. Post, Jr., Bill M. Allen, Leroy W. Pickett, or any of them and/or their agents, whether corporate or otherwise, shall be considered to be full and reasonable considerations for any and all services heretofore rendered by them to 'second party' Lakewood Country Club, Inc." (Emphasis supplied) (D. Ex. 30)*

The District Court barred any reference to this Consent Order.

The Lakewood Country Club has now been reorganized; construction has been completed; and all members are paying dues. This was accomplished after the defendants had been ousted of control and the evidence is uncontroverted that no "life member" was asked for dues nor was any minimum spending requirement invoked during the period of the defendants' control of the club and club complex.

This indictment was returned in the Spring of 1964, alleging, in substance, material misrepresentations by the defendants in the sale of memberships. The misrepresentations alleged in the indictment were with respect to the "limited number of life memberships" with "no assess-



ments—ever'', the use of prominent citizens' names on the advisory committee, the assertion that the defendants and others—particularly Freeland and Hayes—would be investing their own money in the club, and the non-disclosure of the defendants' total ownership and substantial income from the club. Indictment, Count I, ¶ 16(a)-16(e).

The case proceeded to trial before the Honorable William B. Jones in late April of 1966 and proceeded through mid-June of that year, at the conclusion of which the defendants were convicted of conspiracy and 13 substantive mail fraud counts. Following post-trial proceedings, the defendants were sentenced in January of this year, as previously indicated.

Such other facts as are necessary for the understanding of the particular points raised on appeal are set forth in more detail in other portions of this Brief.

#### SUMMARY OF ARGUMENT

As has previously been indicated, the multiple mail fraud convictions here on appeal arose from the organization, and financial collapse, of the Lakewood Country Club in Rockville, Maryland. The defendants conceived the idea for the club, brought into existence the necessary corporate entities to bring it about, planned and conducted an enormously successful promotional campaign, collected large sums of money from prospective golfers and undertook construction of the club facilities. The club foundered financially with construction virtually completed and, on March 31, 1961, responsive to a complaint in an equity action filed in the District Court, District Judge Leonard P. Walsh appointed a conservator over club affairs and ousted the defendants from management and control. The defendants later voluntarily relinquished all ownership interests in the club as a result of a settlement with the members and the conservator and with the approval of the Court.

1. The government showed, by documentary evidence, by the testimony and charts of an accountant and by other means that the defendants had caused large sums of money (\$93,000—T. 3921) to be sent to other clubs in which they (or some of them) had an interest. But, by imposition of an arbitrary cutoff date, the defendants were precluded from showing equally large sums of money being returned to Lakewood (\$82,000—T. 3649-3654). The enforcement of this cutoff date also prevented the defendants from proving their efforts to secure additional financing for the club, even to the extent of diminishing their own ownership interest. The trial court ruled that since the conservatorship which was established on March 31, 1961 had one practical effect of removing the defendants from all operational control over the club complex, no actions of the defendants after that date could have been relevant. This was error. It overlooked the fact that the critical issue was one of intent at the time of mailing, that events occurring thereafter can be relevant on that issue, *Little v. United States*, 73 F. 2d 861, 867 (10th Cir. 1934), and that it was competent to show every part and parcel of the defendants' operation calculated to shed light on their intent. *Lefkowitz v. United States*, 230 Fed. 664, 666 (2d Cir. 1921).

2. Responsive to the government's requests, the trial court defined business "promoters" and then went on to tell the jury that if they found the defendants to have been "promoters" then they should apply certain fiduciary standards to the relationship of the defendants to the club members—among them full disclosure of all personal interests, no secret profits, etc. The court went on to say that violation of these fiduciary standards would constitute "an act of fraud" (T. 4087). Not only does the "promoter" concept not apply to the situation disclosed by the case at Bar, but the instruction given by the court had the necessary effect of improperly and unfairly diminishing the

government's heavy burden of proof. *Epstein v. United States*, 174 F. 2d 754, 765-766 (6th Cir. 1949).

3. Although recognizing that this Court has only recently considered a similar "Allen" charge and upheld its validity in *Fulwood v. United States*, U.S. App. D.C. , 369 F. 2d 960 (1966), the appellants here ask the court to reconsider the propriety of the "Allen" charge as here given. Note, *Due Process, Judicial Economy and the Hung Jury: A Reexamination of the Allen Charge*, 54 Va. L. Rev. 123 (1967).

4. This case brings the Court another opportunity to consider the effect of an unreasonably delayed prosecution in other than the head-to-head narcotics confrontation case. *Tynan v. United States*, Nos. 20335, 20394, 20395 (Apr. 5, 1967). The facts of the case reflect full access to all corporate books and records in early 1961, presentation to a grand jury for the District of Maryland in 1961 and a fully prepared case at the latest in early 1962 as reflected by the statements produced pursuant to 18 U.S.C. § 3500. The indictment was not returned until June 1964. If the delayed prosecution concept can ever properly be applied to a non-narcotics case, *Hanrahan v. United States*, 121 U.S. App. D.C. 134, 348 F. 2d 365 (1965); *United States v. Parrott*, 248 F. Supp. 196 (D.D.C. 1965), this case affords a classic example.

5. The trial court excluded all reference to the agreement by which the civil conservatorship proceedings were concluded and as a result of which the defendants abandoned any ownership interest in the club. This document contained a recognition by the club and by its officers, individually and as representatives of the class of members allegedly defrauded, that all moneys disbursed "to or for the benefit" of the defendants were "full and reasonable consideration for any and all services" of the defendants. The defendants should have been permitted to introduce that document.

## ARGUMENT

**1. By Establishing a Cutoff Date of March 31, 1961, the Trial Court Erroneously Excluded Evidence Pertinent to the Appellants' Good Faith**

It has become almost axiomatic that, in mail fraud cases in which the mailing is conceded and in which the victims' loss is established, the critical element is the good faith of the defendants in utilizing all within their power to give to the alleged victims that which was promised to them. The close and sometimes very difficult distinction between a business failure, with the consequent unhappy customers and investors on the one hand, and a scheme to defraud on the other, is perhaps best underscored by *Getchell v. United States*, 282 F. 2d 681, 690 (5th Cir. 1960), in which it is pointed out that there is "a natural tendency to find a scape-goat for a failing enterprise". Courts must be sensitive to the distinction between a failing business enterprise and scheme to defraud. This has led in the mail fraud cases to a series of decisions to the effect that no evidence of actions which bear even remotely on the critical element of culpable intent or a lack of good faith should be withdrawn from the jury. *Lefkowitz v. United States*, 230 Fed. 664, 666 (2d Cir. 1921); *Worthington v. United States*, 64 F. 2d 936, 940 (7th Cir. 1933); *United States v. Brandt*, 196 F. 2d 653, 657 (2d Cir. 1952); *Little v. United States*, 73 F. 2d 861, 867 (10th Cir. 1934).

The trial court adopted this view in permitting the defendants to adduce evidence of their efforts to secure additional financing for the Lakewood Country Club in the Fall of 1960 and the Spring of 1961, when it became apparent that additional funds were to be required in order to complete the country club complex which was then under way. Thus, the defendants presented testimony with respect to a series of meetings had with the Sam Snead group looking toward additional financing (T. 3436, *et seq.*; D. Ex.

338). The Court, however, by establishing an arbitrary cutoff date of March 31, 1961, precluded the defendants from further demonstrating efforts to put the Lakewood Country Club back on its feet. It will be recalled that, following a series of membership meetings, a group of members filed a class action in the United States District Court for the District of Columbia and that on March 31, 1961, responsive to the Complaint in that case, the Honorable Leonard P. Walsh entered an injunctive order which had the effect of establishing a conservatorship over the club and all related corporations and had the further effect of ousting the appellants and those in concert with them from any operational control over the club or its finances. *Supra*, pp. 11-12. Notwithstanding this, the appellants did continue their efforts to bring about a successfully completed Lakewood Country Club. One such matter was their negotiations with Warren Lockwood, a Montgomery County realtor, relating to the so-called "Lockwood proposal" to take over the defendants' position in the Lakewood Country Club and to complete the facilities and operate the club on his own (T. 3509, *et seq.*). Negotiations with the Lockwood group began in the Spring and Summer of 1961 and culminated in a proposal made by Lockwood in the Fall of 1961, after conservatorship had been established. The evidence was excluded and an offer of proof made. (T. 3514)<sup>2</sup> That offer which details the Lockwood proposal is as follows:

"The defendant Pickett proposes to introduce a witness in his behalf at this time, a Mr. Warren Lockwood, who would testify that from the period of May, 1961 to approximately September, 1961 he engaged in

---

<sup>2</sup> Thus, the defendants avoided the pitfall of *Little v. United States*, 73 F.2d 861, 867 (10th Cir. 1934):

"There being no offer of proof, we cannot tell whether the evidence sought to be adduced was so remote or unconnected with the alleged scheme as to throw no light upon the intent of the defendant when the letters were mailed."

a series of conferences and negotiations with the defendants Post, Allen and Pickett, with a view towards taking over all their right, title and interest in Lakewood Country Club. For this he would pay to the defendants \$100,000. His proposal to the membership itself, to take over and operate the club, was the following:

“For regular members, they could pay dues of \$12 plus tax, with \$25 minimum spending; or \$18 plus tax, which were dues only, and no minimum spending. This of course was at the member's option.

“A life member could either have no dues, with a \$25 minimum spending requirement; or \$8.50 plus tax, which again is dues only, with no minimum spending requirement. And, again, this was at the member's option.

“The so-called Lockwood proposal was submitted to the membership on two separate occasions—on November 1st, 1961, at which, as I previously stated, the meeting ended in a chaotic uproar and Mr. Lockwood withdrew his proposal. Mr. Lockwood again submitted his proposal to the membership, I would say, at the end of November—I think it was November 29th, 1961—and his proposal was defeated by a vote of the membership.” (T. 3514-15, T. 3516)

The proffer was joined in on behalf of the defendants Post and Allen (T. 3517). The evidence was rejected by the Court, the Court ruling:

“... I sustain your objection and, for the record, I am doing it for this reason: In the first place, this is at a time subsequent to the takeover by the conservator. Further, the agreement or proposed agreement between Mr. Lockwood and the defendants was conditioned upon a situation or a relationship between members and owners quite unlike what had been set up in the sales to these members, and particularly the life members. Therefore I don't consider this to be a good-faith showing here; or also on feasibility, under the conditions on which the life members came in.”

At least in part, therefore, this proffer was rejected because it occurred "at a time subsequent to the takeover of the conservator" (T. 3516-17).

At yet another point, the court enforced this cutoff date to exclude defense testimony about funds being returned to the Lakewood Country Club. The Government's testimony showed a large sum of money going from the Lakewood complex, through Golf Contractors, Inc., for construction of the Texas club (Government Exhibit 183, Schedules A-2, B-1, B-2). During the testimony of the defendant Post and that of Wayne Freeland, there was evidence introduced of a joint venture agreement between Post, Allen and Pickett, on the one hand, and Golf Contractors, Inc., on the other, to construct a golf course at Glen Haven in Texas (T. 2745, *et seq.* 3117 *et seq.*; D. Ex. 306-312). There were a series of seven promissory notes signed personally by Freeland and Hayes and, finally, a substitute note for \$104,000, made payable to Golf Contractors, Inc., which had been shown to be a wholly-owned subsidiary of Post, Allen and Pickett D. Ex. 306, 308). This note was supported by a deed of trust on the property in Texas. All of this occurred prior to the conservatorship. Subsequent to the conservatorship, at least \$82,000 was returned through Golf Contractors, Inc. to the Lakewood Country Club as a result of the prior arrangements made at the time that the money was loaned. The court excluded this testimony on the grounds that the return occurred after the imposition of a conservatorship (T. 3654-3648, 3654). Another detailed offer of proof was made:

"I offer to prove through Mr. R. L. Ragsdale, the Vice President of Southern Title Company, Incorporated, that he has been Vice President of the Southern Title Company, Incorporated, since at least 1955, that during the period 1961 and 1962 he was personally acquainted with transactions relating to the Glen Haven Club, Incorporated, of Houston, Texas, which later became Sandy Lakes Country Club, Incorpo-



rated, of Houston, Texas, and a contract between that club and Golf Contractors, Incorporated.

"I further offer to prove through this witness, that on or about December 8th, 1961, the Glen Haven Country Club, Incorporated, of Houston, Texas, filed restated and amended articles of incorporation with the Secretary of State of the State of Texas, as a part of which its name was changed to Sandy Lakes Country Club.

"And, as a part of that, I would proffer defendants' exhibit number 346, a certified copy of the amended articles of incorporation, certified to by the Assistant Secretary of State of the State of Texas.

"I would further offer to prove through this witness, that the then Sandy Lakes Country Club of Houston, Texas, caused a loan to be negotiated from the Gibraltar Savings Association in the amount of \$500,000.00, that this amount of \$500,000.00 plus certain additional amounts available was disbursed by the Southern Title Company, Incorporated of Houston, Texas, by and under the supervision of this witness, Mr. Ragsdale.

"In that connection, I would offer the disbursement schedule, defendants' exhibit number 343.

"A part of that disbursement schedule is a check in the amount of \$82,000.00 dated May 16, 1962, drawn on the Citizens State Bank of Houston, Texas, and made payable to Vinton E. Lee, Sequestrator, Sandy Lakes Country Club Mortgage Note, and bearing on the back the notation "Pay to the Order of Security Bank for Deposit to the Credit of Vinton E. Lee, Sequestrator of Sandy Lakes Country Club Mortgage Note Payable to Golf Contractors, Inc., as a part of Lakewood Country Club, Inc., et al. Court Order of January 22, 1962.

"That check is defendants' exhibit number 344 which I would offer as a part of the proffer.

"Following the entry of that check, or the drawing and submission of that check,—Withdraw that, please. Prior to the drawing of that check, this witness, as an officer of the Southern Title Company, would identify



a telegram purporting to be signed by Vinton Lee and addressed to Southern Title Company, 1104 Rusk Avenue, Houston, Texas, and which bears the defendants' exhibit number 342, and which reads as follows:

[Reading] 'We are prepared to forward the note to you at the time of settlement so that you may mark it paid and satisfied and return it to the maker in exchange for a check to Vinton E. Lee, Sequestrator, Sandy Lakes Country Club Mortgagee Note.

The balance of the note payable to Golf Contractors, Inc., from Sandy Lakes Country Club is \$82,000.00.'

"It is signed 'Vinton E. Lee, Sequestrator, Sandy Lakes Country Club Mortgage Note'.

"We would offer that telegram as part of the proffer.

"Following the drawing of the check by the Southern Title Company, it was forwarded to Mr. Lee pursuant to a letter signed by this witness, R. L. Ragsdale, and bearing defendants' exhibit number 345, which we would proffer as an offer as a part of this proffer.

"This letter bears the date May 16, 1962. It's addressed to Mr. Vinton E. Lee, Investment Building, Washington, D. C.

[Reading] 'Dear Sir: Pursuant to your telegram of May 4, 1962, to Southern Title Company, we enclose herewith Southern Title Company Check No. 165247 to your order in the amount of \$82,000.00, as payment in full of the note payable to Golf Contractors, Inc., and a release of the mortgage lien securing the payment of said note.'

[Mr. Bergan continuing in the reading of Defendants' Exhibit 345 for identification re proffer of proof.]

'We have consulted Mr. Walter P. Zivley, the trustee in said Deed of Trust, and he has approved your execution of the release of the mortgage lien. Please execute and acknowledge the enclosed release before a Notary Public and return the same, together

with the original note marked "Paid" and any other papers you may have relating to this transaction.' It is signed: 'Very truly yours,

R. L. Ragsdale  
Vice-President.'

"Following that, Mr. Ragsdale would identify the original of the mortgage note for \$104,000.00, dated June 14, 1961. And it bears Defendants' Exhibit Number 347, which we would proffer in evidence as a part of this proffer, marked on the bottom 'Paid May 16, 1962, by Southern Title Company.' And the initials are 'R.L.R.', which this witness would identify as his own.

"Finally, this witness would identify Defendants' Exhibit Number 348—and all of these exhibits which I have mentioned, incidentally, come from this file—which is a Release of Lien filed in the County Court-house before the County Clerk in and for the County of Fort Bend, Texas, by which this Deed of Trust, Defendants' Exhibit 347, was released, and this Deed of Trust, Defendants' Exhibit 348, is signed by Vinton E. Lee, and it includes one paragraph:

[Reading] 'WHEREAS, said note is now owned and held by Vinton E. Lee, Sequestrator, and to whom said note has been paid in full.'

"We would offer that document, defendants' exhibit 348, as part of the proffer." (T. 3649-54)

The paramount issue in this case, as in virtually every mail fraud case, is the good faith of the defendants and the critical issue to be decided, indeed the only issue, since mailing and loss were clearly established and not seriously contested, is whether Post Allen and Pickett did everything within their power to produce what they had promised to produce, i.e. a golf club course on the Lockwood site. As was stated in *Lefkowitz v. United States, supra*, it is—

"competent to show *every part and parcel of such business* or the method of conducting it, calculated to

shed light upon the intent and purposes of its managers." (Emphasis supplied)

Similarly, in *United States v. Brandt, supra*, the court, in reversing a mail fraud conviction, wrote:

"Culpable intent or lack of good faith is not merely an element of the crime of fraudulent use of the mail, . . . it is in fact practically crucial where, as here, the scheme and the mailing are admitted . . . and hence, since it may be only inferentially proven, 2 *Wigmore on Evidence*, 300, 302, 2d Ed. 1940, no evidence or actions which bear even remotely on its probability should be withdrawn from the jury unless the tangential and confusing elements interjected by such evidence clearly outweigh any relevancy it might have." (Emphasis supplied)

And see *Little v. United States, supra*:

"But the question of the good or bad faith of defendant when the letters were mailed was a critical issue of fact. Events occurring after the letters were mailed might shed light upon the intent of defendant when the letters were mailed."

The evidence which the court excluded by utilization of the March 31, 1961 cutoff date effectively precluded the defendants from showing certain acts "calculated to shed light upon [their] intent and purpose." *Lefkowitz v. United States, supra*.

The government was permitted to show a large sum of money which went from the Lakewood complex to the Texas club. (Government's Exhibit No. 183, Schedules A-2, B-1, B-2.) But the figure is misleading because the money returned, as the testimony proffered through the witness R. L. Ragsdale did show. (Tr. 3639, *et seq.*; proffered Defendants' Exhibit Nos. 342-348.) Yet, the defendants were precluded from establishing this because of the imposition of this arbitrary cutoff date. Likewise, the

imposition of the cutoff date permitted the government, through charts, to show a massive sum going out from Lakewood to other allegedly unrelated enterprises. Who knows what impression the jury might have reached had the defendants been permitted to show that by far the vast majority of the money thus loaned was returned. Regrettably this was highlighted by the closing argument of Government counsel (T. 3921-3922):

“We find them sending a net of \$93,000.00 and some dollars to their other clubs. When I say their other clubs, I mean Golf Contractors, Inc., . . . That, ladies and gentlemen, is a net figure. That takes into consideration every dime that came back from those other corporations. \$93,000.00 is net.”<sup>3</sup>

Similarly, had the defendants been permitted to adduce testimony of the so-called “Lockwood proposal”, it would have been another indication of the defendants’ good faith, for the argument then would have been available to them that, even though the Court had ousted them from management, they were still attempting to produce what they had promised to produce, i.e., a club.

We do not argue that this evidence, either individually or in a total, would have necessarily *required* an acquittal. We need not go that far. What we do say is that it demonstrates a “part and parcel” of the entire transaction, that it was relevant and competent on the issue of the defendants’ intent and motive, that it was critical on the issue of continuing good faith, and that its exclusion seriously hampered the presentation of the defendants’ defense. *Lefkowitz v. United States, supra*. It is no answer to say that this might have necessitated a retrial of the conservatorship proceedings. If that be so, so be it. But it is not so. It may be that the government would have sought to cast a doubt on the defendants’ assertion of good faith

---

<sup>3</sup> A motion for mis-trial was made and denied. (T. 3927)

by showing that these actions were taken at the behest of the conservator, or that they were forced by the conservator, or that there was some other ulterior motivation for the defendants' actions. They would be entitled to try to make this showing. But the fact that this would have intruded, at least partly, into the conservatorship proceedings was insufficient basis for the Court to exclude this testimony in its entirety. It was prejudicial error requiring a new trial.

While we do not argue that this evidence would have been dispositive of the defendants' guilt or innocence, it is a fact that the jury in this case was in conference for more than 20 hours once they received the case, that they returned once to have the entire of the court's instructions reread to them, and that they returned later to announce that they were deadlocked. It was several hours after having received an Allen type charge following their deadlock announcement that they returned the verdict here in question. Under the circumstances, a reviewing court cannot say that the proffered and rejected testimony would have had no influence on the verdict of guilt. *Fahy v. Connecticut*, 375 U.S. 85, 86 (1963); *Chapman v. California*, 386 U.S. 18, 21-24, (1966).

## 2. The "Promoter Instruction" Given by the Trial Court Was Error

At the conclusion of the case, the Government tendered two instructions, the concept of which had its foundation in the civil law of fraudulent breach of fiduciary obligations. These tendered instructions are as follows:

### *Government's Request to Charge No. 16*

As promoters of Lakewood Country Club, the defendants sustained a fiduciary relationship to the members, prospective members, and the Club itself and as such they may not deal unfairly with them or obtain secret profits based upon their position.

In addition, you are instructed that the intentional conversion of trust funds to the personal use of the trustees is recognized as a breach of trust and an act of fraud on the persons from whom the money was obtained. Such violations of fiduciary duty by promoters, when performed with the requisite fraudulent intent constitute a scheme to defraud within the purport of the Mail Fraud Statute.

*Government's Request to Charge No. 17*

As to the promoters of the Lakewood Country Club, Troy V. Post, Jr., Bill M. Allen, and Leroy W. Pickett assumed a position of trust in relation to both the club corporation and the members who joined and as such they were bound to exercise the utmost good faith in their dealings with them. They were required to disclose fully all material facts touching on their relation to the club and the members and were required to fully advise members and prospective members of any interest they had which would in any manner affect the club. The fiduciary position of the promoters required that their dealings be open and fair. They were not allowed to benefit by any secret profit or advantage which they may have gained at the expense of the club or its members.

You are instructed that in promoting the sale of Lakewood Country Club memberships, Post, Allen, and Pickett had a duty to faithfully disclose all facts which might influence prospective members in deciding whether or not to purchase memberships. In this connection Post, Allen, and Pickett had a duty to refrain from misrepresenting any material facts and an additional duty to disclose to members and prospective members Post, Allen, and Pickett's personal interest in any transaction relating to the enterprise.

After a lengthy colloquy, and over strenuous defense objections, the trial court granted the instructions in substance and gave the following charge:

"The jury are instructed that a promoter is a person who sets in motion machinery that brings about the incorporation and organization of a corporation,

brings together the persons interested in the enterprise to be conducted by the corporation, aids in inducing persons to become members of the corporation, and in procuring from them membership fees to carry out purposes set forth in the corporation's articles of incorporation.

"If from the evidence in this case the jury should find beyond a reasonable doubt that the defendants were the promoters of Lakewood Country Club, Inc., then you are instructed that the defendants stood in a fiduciary relation to both the corporation as a separate legal entity and the members, including those persons who it was to be anticipated would make application to and would become members in Lakewood Country Club, Inc. Such a fiduciary relationship on the part of the defendants, should you find them to be the promoters of the Lakewood Country Club, Inc., required that they exercise the utmost good faith in their relations with the corporation and the members, including fully advising the corporation and members, and persons who it was to be anticipated would become members, of any interest which the defendants had that would in any way affect the corporation, the members and anticipated members. Such a full disclosure requirement, if you should find the defendants to be the promoters, would obligate them to faithfully make known all facts which might have influenced prospective members in deciding whether or not to purchase memberships. And this full disclosure would include the duty to refrain from misrepresenting any material facts, as well as the duty to make known any personal interest the defendants had in any transaction relating to the country club enterprise.

"Also you are instructed that if you should find beyond a reasonable doubt that the defendants were promoters of the Lakewood Country Club, Inc., and that the funds obtained by them from members of the club corporation to accomplish the purposes of the corporation were used by them for the club's benefit, they were properly used. On the other hand, if you should find beyond a reasonable doubt that the defendants were the promoters of the club corporation,



and that they had intentionally converted those funds to their own personal use, such would be a fraud on the members of the club corporation, since such funds were in the nature of trust funds as to which the defendants had a fiduciary obligation. And in that connection you are further instructed that for promoters to knowingly use their fiduciary position to obtain secret profits at the expense of the corporation or its members would not only be a breach of that fiduciary duty but an act of fraud." (T. 4085-4087)

The appellants here assert that the charge was error on two basic grounds: (1) the promoter concept, while perhaps applicable to the stock corporation in which an interest in the enterprise is purchased for investment purposes has no application to the type of situation in the case presently at Bar; and (2) even if the promoter concept *were* applicable, the giving of such hand instruction had the effect of diminishing the burden of proof shouldered by the Government in a *criminal* fraud case.

**(a) The "promoter" concept has no proper place in this case**

The "promoter" concept and the rules, statutory and otherwise, which have sprung up around promoters are most elusive. It has, indeed, been observed that "the exact legal status of the promoter has appeared a mischievous puzzle to the jurists." I Dewing, *Financial Policy of Corporations*, 415 (5th Ed. 1953); for a more lengthy assertion of the same general theme, see Isaacs, *The Promoter: A Legislative Problem*, 38 Harv. L. Rev. 887 (1925).

There are many acceptable definitions of a "promoter". In *Dickerman v. Northern Trust Company*, 176 U.S. 181, 203 (1900), it is said:

"A promoter is one who 'brings together the persons who become interested in the enterprise, aids in procuring subscriptions and sets in motion the machinery which leads to the formation of the corporation itself'."



Pointing out that the word "promoter" is one of business, not of law or fact, and that it may not be susceptible of precise definition, 1 Fletcher, *Cyclopedia of Corporations*, § 189, defines it as including—

"those who undertake to form a corporation and to procure for it the rights, instrumentalities and capital by which it is to carry out the purposes set forth in its charter, and to establish it as fully able to do its business."

Other definitions are generally in accord.

A common law of promoters has grown up, see *Isaacs, supra*, by which the promoter is made a fiduciary to the future owners of the enterprise which he promotes and to the enterprise itself. 1 Fletcher, *supra*, at § 192 and cases there cited. *McCandless v. Furland*, 296 U.S. 140, 156 (1935). But, the concept of the fiduciary obligation of the promoter has grown up in situations in which the promoter has then sold shares in the corporate enterprise—in effect, a *partial ownership interest*—to later subscribers. Thus, language is found in *Dickerman, supra*, at 204, to the effect that "he [the promoter] is precluded from taking advantage of the other stockholder". The rationale is easy. Investors, who buy an interest in the business enterprise, are very much at the mercy of the promoter and, consequently, a fiduciary duty is imposed. What of the situation, as here, in which the promoters become the corporation, own it fully among themselves, and simply use it as a vehicle to sell a commodity—the right to play golf at a given location and for a given price. Lakewood Country Club, Inc. was a Maryland non-profit corporation, no part of the proceeds of which might properly inure to the benefit of any individual member. Should this make a difference? Logically, yes—for, under such circumstances there is no one to be a fiduciary to. And the few cases which have considered this point seem to agree. In *Foster v. Seymour*, 23 Fed. 65 (C.C.S.D.N.Y. 1885), four men organized a cor-

poration, subscribed to its stock, built a railroad and then sold it to the corporation. Assuming the transaction to be fraudulent, the Court held:

"The fraudulent character of the transaction was imparted to it by the corporation itself; that is by those who represented all there was of the corporation.

\* \* \*

"It was not a fraud upon stockholders, however, because there were none;"

Similarly, in *McCracken v. Robinson*, 57 Fed. 375, 377 (2d Cir. 1893):

"If it was an improvident arrangement they were the only losers. If it was calculated to defraud anybody, they were the only possible victims."

See also *Barr v. N.Y., L.E. & W.L.L. Co.*, 125 N.Y. 263, 26 N.E. 145 (1891). And see *Old Dominion Copper Co. v. Lewisohn* 148 Fed. 1020 (2d Cir. 1906), *aff'd* 210 U.S. 206, 216 (1908); but cf. *Old Dominion Copper Co. v. Bigelow*, 188 Mass. 315, 74 N.E. 653 (1905).<sup>4</sup> More recently, in *Northridge Corp. Sec. No. 1 v. 32nd Ave. Constr. Corp.*, 286 App. Div. 422, 142 N.Y.S. 2d 534, 539 (1st Dept. 1955), the court adopted a similar approach:

"It is apparent that until the tenants of a cooperative project come into the picture, the sponsor was acting on his own behalf and at his own risk. As the co-

---

<sup>4</sup> Bigelow and Lewisohn were partners. The United States Supreme Court and the Supreme Judicial Court of Massachusetts reached opposite results on essentially the same state of facts. See Little, *Promoters' Frauds in the Organization of Corporations: The Old Dominion Copper Mining Cases*, 5 Ill. L. Rev. 87 (1910); Weston, *Promoters' Liability: Old Dominion v. Bigelow*, 30 Harv. L. Rev. 39; Brockelbank, *The Compensation of Promoters*, 13 Ore. L. Rev. 195 (1934); McGowan, *Legal Controls of Promoters' Profits*, 25 Geo. L.J. 269, 280-282, N.38 (1937). Even Justice Loring in the Supreme Judicial Court noted:

"It is hardly necessary to point out the difference between such a case, where the scheme of corporate organization does not contemplate there be any stockholders . . ." 188 Mass., at 325-326, 74 N.E., at 657.

operative-corporation was to be incorporated by the sponsor, the original directors of that corporation would have to be nominated by the sponsor. We fail to see how they would be under any fiduciary obligation to the future tenants in these initial stages."

Thus, the appellants assert that the promoter fiduciary concept has no place in a situation in which (1) the promoters are the corporation, and (2) there is no intention to sell an interest in the corporation to others. This has been described as an "almost universally accepted doctrine". Mosbacher, *Corporate Right of Action for Promoters' Frauds on Future Shareholders*, 22 Cal. L. Rev. 326, 329 (1933).

**(b) The Instruction misallocates the burden of proof in a criminal case**

Even if it were proper to apply the promoter fiduciary concept to a case of this type civilly, to do so criminally makes a shambles of the burden of proof requirements for it allows conviction based not upon a knowing, calculated intent to defraud but upon something else, something akin to constructive fraud.

The instruction thus given is in direct conflict with the well reasoned and exhaustive opinion in *Epstein v. United States*, 174 F. 2d 754 (6th Cir. 1949). In that case, the Court carefully distinguished between constructive fraud, such as might make the defendants civilly liable, and the fraud necessary to constitute a breach of 18 U.S.C. § 1341. The Court wrote, 174 F. 2d at 765, 766:

"Courts speak of actual or active fraud as contrasted with constructive fraud. Actual fraud as being defined as intentional fraud, consisting in deception intentionally practiced to induce another to part with property or to surrender some legal right and which accomplishes the end designed. It requires intent to deceive or defraud . . . To constitute actual fraud there must be such a fraud as affects the conscience . . . Constructive fraud is a breach of legal or equitable duty

which, in spite of the fact that there is no moral guilt resulting from the breach of duty, the law declares fraudulent because of its tendency to deceive others, to violate public interests. Constructive fraud may be found merely from the relation of the parties to a transaction or from circumstances and surroundings under which it takes place . . . *It is said that constructive fraud is a term which means essentially nothing more than the receipt and retention of unmerited benefits . . .*

"In order to prove a scheme to defraud under the mail fraud statute, there must be proof of a scheme embracing active or actual fraud. A charge of using the mails to carry out a scheme to defraud cannot be maintained on proof of mere constructive fraud."

\* \* \* \*

"Conceding this to be the rule of law, nevertheless, the government attempts to neutralize its effect by emphasizing that the 'elements of fraud developed in civil cases are applicable in prosecutions under the mail fraud laws.' . . . And use of the mails to defraud is not limited to what would give rise to a common-law action for deceit. . . . *Assuredly, we must consider fraud in mail fraud cases according to the standard of what fraud is in civil cases. That, however, is no qualification of the rule that to sustain a charge of using the mails to defraud, there must be proof of an actual fraud, rather than a constructive fraud; and the fact that the crime of using the mails to defraud is not limited to what would give rise to a common-law action for deceit means, for instance, that a showing of loss to the victim is not necessary to conviction for mail fraud, it does not imply that constructive fraud, or anything less than actual fraud, can sustain the charge of using the mails to defraud.*" (Emphasis supplied.)

It obviously must follow that fraud, and particularly the intent to defraud, cannot be equated to merely receiving benefits which is the necessary effect of the "promoter" instruction given in the instant case. Specific intent to defraud is an essential element of mail fraud. *United States v. Shavin*, 267 F. 2d 647, 652 (7th Cir. 1951); *United States v. Brandt*, 196 F. 2d 653, 657 (2d Cir. 1952); *Miller*

v. *United States*, 120 F. 2d 968, 970 (10th Cir. 1941). Any instruction denoting intent below a knowing purpose and design to defraud is a reversible error. *West v. United States*, 68 F. 2d 96, 98 (10th Cir. 1923); *Frank v. United States*, 220 F. 2d 559, 565 (10th Cir. 1955). Similarly, in *Shushan v. United States*, 117 F. 2d 110, 115 (5th Cir. 1941), the Court observed:

"We agree with appellants that the constructive frauds which equity in civil cases sometimes sets up to do justice will not suffice under this [a predecessor] statute;"

This was reaffirmed in *Bradford v. United States*, 129 F. 2d 274, 276 (5th Cir. 1942).

Assuming the Court otherwise adequately to have defined the necessary specific intent, the "promoter" instruction contradicted it on the basic issue. See *Bollenbach v. United States*, 326 U.S. 607, 612-615 (1946). As the Court said in *McFarland v. United States*, 85 U.S. App. D.C. 19, 174 F. 2d 638, 639 (1949):

"If a charge to a jury, considered in its entirety, correctly states the law, the incorrectness of one paragraph or one phrase standing alone ordinarily does not constitute reversible error; but it is otherwise if two instructions are in direct conflict and one is clearly prejudicial, for the jury might have followed the erroneous instruction. *Nicola v. United States*, 3 Cir., 1934, 72 F. 2d 780, 787; *Drossos v. United States*, (8 Cir. 1924), 2 F. 2d 538, 539. 'A conviction ought not to rest on an equivocal direction to the jury on a basic issue.' *Bollenbach v. United States*, 1946, 326 U.S. 607."

### 3. The Court Erred in Giving the "Allen" Charge<sup>5</sup>

The jury received this case on Thursday, June 16, 1966, in the early afternoon. They were sent home for the evening after considering the case for three and one-half

<sup>5</sup> The succeeding portion of the Brief is inserted, notwithstanding the Court's opinion in *Fulwood v. United States* — U.S. App. D. C. —, 369 F.2d 960 (1966). We urge reconsideration of *Fulwood*.

hours. The following day after convening at 1:30 and failing again to reach a verdict they were sent home for the weekend at approximately 5:30 (T. 4171). Upon returning Monday morning the Court was requested by the foreman to reread the entire charge (T. 4118). This was done. In the late afternoon the jury advised the Court through their foreman that they were deadlocked. (T. 4169)

Over the strenuous objections of all appellants, the Court, after having received notification that the jury was unable to reach a verdict at the end of many hours of deliberation, gave a charge patterned after that in *Commonwealth v. Tvey*, 18 Cush. 1 (Mass. 1851), and approved in *Allen v. United States*, 164 U.S. 492 (1896) (T. 4172-4173). The appellants objected to the fact that any such charge was given and, additionally, to the specific language of the charge (T. 4182).

There has been serious judicial dissatisfaction with the "Allen" charge of late; some courts, both state and federal, have dismissed it in its entirety. *State v. Randall*, 137 Mont. 534, 353 P. 2d 1054 (1960); see *State v. Thomas*, 86 Ariz. 161, 342 P. 2d 197, 200 (1959), in which the Court said:

"We are convinced that the evils far outweigh the benefits, and decree that its use shall no longer be tolerated and approved by this court."

And see *State v. Pyle*, 143 Kan. 772, 57 P. 2d 93 (1956); see also the lucid dissent of Judge Brown in *Hoffman v. United States*, 297 F. 2d 754, 755 (5th Cir. 1962). Mr. Justice Clark, in *Clark, Progress of Project Effective Justice—A Report on The Joint Committee*, 47 J. Am. Jud. Soc'y 88, 90 (1963), has written:

"Nor do we circulate the 'Allen charge' to the new judges as I used to do when heading up the criminal division in the Department of Justice. Allen is dead and we do not believe in dead law."

In *Green v. United States*, 309 F. 2d 852, 854 (5th Cir. 1962), the Court said:

"The Allen or 'dynamite' charge is designed to blast loose a deadlocked jury. There is small, if any, justification for its use."

See also *United States v. Rodgers*, 289 F. 2d 433 (4th Cir. 1961). The vice of the charge which the Court gave, as illustrated at T. 4174, is that it invited, indeed commanded, the minority to accede to the majority without, either, any converse instruction or the assertion that no juror would be expected to yield a conscientious conviction. Although the Court purported not to do so, the instruction here is much akin to that held impermissible in *Green v. United States*. As the Court pointed out in that case, 309 F. 2d, at 855:

"None of the 'dynamite' charges approved by this Court in criminal cases supports the charge delivered by the court below. The instruction to the jury permitted in *Sikes v. United States*, 5 Cir., 1960, 279 F. 2d 118, 'was ameliorated by such expressions as: "No juror is expected to yield a conscientious conviction he may have upon the evidence. \* \* \* It is your duty, gentlemen of the jury, to agree unless it does violence to your conscience."' Similarly, in *Shipley v. United States*, 5 Cir., 1922, 281 F. 134, 136, we pointed out that 'the additional charge of the court to the jury as to their duty in endeavoring to reach a verdict fully admonished each juror of his duty, not to agree to any verdict which did not accord with his conscientious convictions \* \* \*.' Here, each juror, far from being 'fully admonished \* \* \* not to agree to any verdict which did not accord with his conscientious convictions, was informed that he had a duty to 'heed the argument of the majority,' which 'will have better judgment than the mere minority.' "

The same vice was in the instruction given by this Court, a vice not occurring in Instruction numbered 15, 16, Mathes and Devitt, Federal Jury Practice and Instructions, and



one not found in the instruction which counsel for the defendants sought to propose. (T. 4175)

Although the Court purported to rely on the case of *Williams v. United States*, 119 U.S. App. D.C. 190, 338 F. 2d 530 (1964), there is nothing in that case which justifies the instruction given here.

As the Eighth Circuit said in *Stewart v. United States*, 330 Fed. 769, 786 (8th Cir. 1924):

"While the excerpt from the opinion in Allen's case was a proper and persuasive argument for the standard and approved charge under such circumstances, it so slightly treated the positive duty of each juror to form and to make his verdict express his own honest conviction, based on the evidence in the case, and so forcibly urged deference to the views of the majority and unanimity, that we are unable to resist the conviction that it tended too strongly toward coercion of the minority of the jury to surrender their honest convictions in order to acquiesce in the convictions of the majority."

And, as this Court said in *Williams*, quoting *Green v. United States, supra*, with approval:

"Nor is there any 'legal rule that the majority of jurors have better judgment than the minority.' *Green v. United States, supra*, Note 1, 309 F. 2d at 855. Indeed, a mistrial is as much a part of the jury system as a unanimous verdict."

And, indeed it is. The court's charge in this case was coercive in nature and substance and necessarily tended to destroy that delicate balance which must, of necessity, exist in a criminal trial.

A recent Note, *Due Process, Judicial Economy and the Hung Jury: A Reexamination of the Allen Charge*, 53 Va. L. Rev. 123 (1967), set out a very lucid and persuasive critique of the "Allen" charge and is a forceful argument for the abandonment of the Allen doctrine in its entirety.



The following passage is particularly applicable to the factual situation before the court:

"Although the language of the *Allen* charge contains a reminder that the jurors should vote only for a verdict with which they conscientiously agree, it may easily influence a minority juror to acquiesce in the majority vote. The charge is expressly directed at the minority jurors. They are importuned to reconsider their decision with a disposition to being convinced and told of their duty to decide the case if they can conscientiously do so. The emphasis of the charge is upon reaching a verdict, not upon voting one's conscientious convictions, and it hardly seems unreasonable that the jury, already frustrated by its inability to agree, will attach such a meaning to it. Moreover, since the majority is not usually urged to reconsider its position, there is an implication, buttressed by the particularly powerful position of the judge giving the instruction, that the majority is correct and that the minority should yield its position and conform to the majority. Even if the *Allen* charge may not in fact be coercive in a particular fact situation at best it injects a temptation to the jury to settle for majority rule rather than the impartial individual determination of each juror. If the *Allen* charge in fact influences a juror to vote for conviction notwithstanding a conscientiously held belief that the state has not proved its case beyond a reasonable doubt, the defendant has been denied due process of law, since he has been convicted not on the basis of evidence presented in court but rather because of the juror's response to what he takes to be the desires of the judge." (footnotes omitted) *Id.*, at 143.

Appellants first contend that it was error to give the *Allen* charge at all, secondly that the charge as given was coercive, and lastly that the trial court further coerced the jury in forcing them to remain in deliberation for the better part of a day after giving the *Allen* charge the preceding evening.

**4. The Indictment Should Have Been Dismissed for Want of Timely Prosecution Occasioned by Unnecessary and Unjustifiable Pre-Indictment Delay.**

Appellant Pickett moved by way of pre-trial motion for dismissal of the indictment on the grounds that the indictment was not returned in a timely fashion, the underlying basis for the motion being that his right to a fair trial had been denied by virtue of the unjustified and oppressive delay on the part of the government in seeking an indictment. Then Chief Judge McGuire of the United States District Court for the District of Columbia denied the motion. Appellant Pickett renewed his motion on the opening day of the trial, at which time it was joined in by appellants Post and Allen. The trial court denied the renewed motion on the basis of the prior denial by Chief Judge McGuire.

The factual background upon which the appellants rely may be briefly stated. The indictment was filed on June 23, 1964. This was five and one-half years after the alleged conspiracy commenced and two years and eight months after the United States Attorney for the District of Maryland began presenting the case to a Baltimore grand jury which took no action. The ability of the government to make a complete presentation before a grand jury was present as early as the summer of 1961. Since March of 1961, all the books and records of Lakewood Country Club had been in the hands of the court appointed conservator. During the time period from March of 1961 to October of 1961, the conservator himself, counsel for the conservator, and counsel for some of the individual members had consultations with the United States Attorney for Maryland and his staff with members of the Federal Bureau of Investigation and with United States Postal Inspectors, bringing to the attention of these persons the alleged criminal activities of the defendants.

During the pre-trial hearing on the motion to dismiss, it was demonstrated that during October and November of 1961 the United States Attorney in Baltimore was presenting the case to a grand jury. Witnesses appeared, testimony was taken and documentary evidence was available. No indictment was returned by that grand jury and it was discharged. The matter lay dormant for over two years until a grand jury was convened in the District of Columbia and returned the present indictment on June 23, 1964. Counsel for the government offered no explanation as to why the United States Attorney for the District of Maryland did not pursue the matter, nor was any legitimate reason given for the two and one-half year period which elapsed between the Baltimore Grand Jury and the swearing of the Grand Jury in Washington during the early spring of 1964. However, the extent to which the government had a fully prepared criminal case against these defendants at an early date became abundantly apparent when statements given to agents of the government were produced for use by the defendants under the provisions of 18 U.S.C. § 3500. These statements, 35 or more in number, upon analysis reflected a case completely prepared in the early spring of 1962. (See Appendix "A" attached hereto)

It is by now well settled, at least in this Circuit, that the statute of limitations is not the only meaningful time period to which the government must adhere in bringing criminal prosecutions. As early as 1962, in *Mann v. United States*, 113 U.S. App. D.C. 27, 29-30, 304 F. 2d 394, 396, n. 4 (1962), a unanimous division of this Court (composed of Judges Washington and Wright and then Chief Judge Miller), noted:

"While the point is not important here, we note that in our view, . . . *the constitutional guaranty protects against undue delay in presenting the formal charge as well as delay between indictment and trial.* The Supreme Court's affirmance of Judge Thomsen's ruling in *Provoo, infra*, seems to have settled that point . . .

[If] the delay is purposeful or oppressive . . . even an indictment within the limitation period may come too late to square with the Sixth Amendment." (Emphasis supplied)

See also *Petition of Provoo*, 17 F.R.D. 183 (D. Md. 1955), aff'd., *United States v. Provoo*, 350 U.S. 857 (1955); see also *Taylor v. United States*, 99 U.S. App. D.C. 183, 238 F. 2d 259 (1956). Two years later, in *Nickens v. United States*, 116 U.S. App. D.C. 338, 340, 323 F. 2d 808, 810, n. 2 (1963), this Court again noted:

"This is not to suggest that delay between offense and prosecution could not be so oppressive as to constitute a denial of due process."

Judge Wright, concurring in *Nickens*, and referring specifically to *Provoo*, *Mann* and *Taylor*, expressly stated that "delay in bringing a complaint may violate Sixth Amendment rights". Judge Wright went on to point out, in footnote 4 to his concurring opinion:

"Some courts have held a complaint and indictment may be delayed with impunity, without regard to the right of speedy trial, because the time of indictment is governed by the statute of limitations. . . . But the constitutional right cannot depend on the terms of the statute. As an act of legislature the period of limitations may be extended. . . . The period may be done away with . . . The legislature is free to implement the constitutional right and to provide protections greater than the constitutional right. But the minimum right of the accused to a speedy trial is preserved by the command of the Sixth Amendment whatever the terms of the statute."

Finally, in *Ross v. United States*, 121 U.S. App. D.C. 233, 349 F. 2d 210 (1965), this Court firmly affixed into law of the District of Columbia the concept that a delay between the time at which the prosecuting authorities (whether they be police, administrative agencies or other-

wise) had knowledge of the offense adequate to prosecute and the time at which the prosecution was commenced must not be unreasonably delayed. In that case, seven months had elapsed from an unlawful narcotics sale to a police undercover agent and the commissioner's warrant for the offender's apprehension.

It is undoubtedly true that the law of *Ross* has, for the most part, been applied to cases in the narcotics area. See *Mackey v. United States*, 122 U.S. App. D.C. 97, 351 F. 2d 794 (1955) (two month delay held not unreasonable); *Powell v. United States*, 122 U.S. App. D.C. 229, 352 F. 2d 704 (1965) (a five month delay held not unreasonable, over the dissent of Judge Wright); *Ward v. United States*, 120 U.S. App. D.C. 311, 346 F. 2d 423 (1965); *Tynan v. United States*, No. 20335, 20394, 20395 (April 5, 1967). However, the delayed prosecution concept is *not* limited in scope to the narcotics cases. This is the error into which Chief Judge McGuire fell in denying the motion originally made on behalf of the defendant Pickett. Judge Gasch, in *United States v. Parrott*, 248 F. Supp. 196 (D.D.C. 1965), dismissed a prosecution brought under Section 17 of the Securities Act of 1933, 15 U.S.C. § 77q(a), on this basis, and this Court, in *Hanrahan v. United States*, 121 U.S. App. D.C. 134, 348 F. 2d 365 (1965), recognized its applicability to mail fraud cases.<sup>6</sup> Notwithstanding that both mail fraud and stock fraud cases are classically made on documentary evidence, as the case at bar amply illustrates, it is now clear that both types of cases may be so affected by the vice of a prosecution unreasonably delayed as to require dismissal of the indictment.

The rationale of these cases is found in *Hanrahan*, 121 U.S. App. D.C., at 137-38, 348 F. 2d 265, at 366-67:

"In curtailing the length of criminal prosecutions the law recognizes certain interests of the person ac-

<sup>6</sup> The further proceedings in *Hanrahan* are reported at 255 F. Supp. 957 (D.D.C. 1966), *aff'd sub nom Tynan v. United States, supra*.

cused and attempts to protect those interests. Speedy trial provisions seek, first, to prevent lengthy pre-trial imprisonment where the accused is unable to make bail, or pre-trial restriction of movement when bail is available. Second, and perhaps equally important, these provisions seek to minimize the anxiety and attendant evils which are invariably visited upon one under public accusation but not tried. *Finally, they seek to insure that the ability of the accused person to answer the charge will not be impaired on account of lost witnesses and faded memories due to the passage of time.*" (footnote omitted; emphasis supplied.)

This Court upon remanding *Hanrahan* for a more fully developed record directed the following:

"If the court should find that all the delay attributable to the prosecution was necessary for fair and just prosecution of the charge of mail fraud then the convictions will stand. If, on the other hand, the court should find that the prosecution was conducted with such disregard of appellants' interests that it can be said that the delay resulted from the deliberate, or at least negligent, actions on the part of the prosecutor and the prosecutor fails to show 'that the accused suffered no serious prejudice beyond that which ensued from the ordinary and inevitable delay' then appellants' Sixth Amendment rights have been denied and the convictions must be vacated and the indictments dismissed." 348 F. 2d 363, 368 (footnotes omitted.)

In response, District Court Judge John A. Sirica conducted an extensive hearing on the aspects of the delay question and concluded: "On the whole record in this case and taking into consideration all of the circumstances the government has demonstrated that the defendants suffered no serious prejudice as a result of the delays which did not ensue from the ordinary and inevitable delay." 255 F. Supp. 957, 971 (D.D.C. 1966). Upon the return of the case, this Court, in analyzing and reviewing the evidentiary hearing and opinion resulting therefrom by Judge Sirica, recognized that there are "real and sub-

stantial differences between the problems of proof in the defense of a narcotic prosecution and those involved in defending against a mail fraud indictment . . ." *Tynan v. United States*, Sl. Op., pp. 3-4, *supra*.

Appellants submit, however, that the delay in the prosecution of this case was solely attributable to the prosecution, was not necessary for fair and just prosecution, and further, even if the delay was not deliberate, it was at least negligent action on the part of prosecuting officials, and that the delay was neither ordinary or inevitable—a situation wholly apart from *Hanrahan*.

While documentary evidence in this case can be said to have been heavily relied upon by both the government and the defense and little, if any, prejudice can be shown by the defense resulting from any loss or destruction of the records, recollection of witnesses and oral testimony was an indispensable ingredient for both sides. The record of the trial amply demonstrates that government witnesses were asked to recall oral statements four, five and six years prior to the trial. That the passage of such a period of time would erode even the best of memories is undeniable.

As an appendix to the appellants' post-trial motions in the trial court, a compilation was made of "I don't remember", "I don't recall" and similar replies by witnesses occurring during the trial. It numbered in excess of 100.

Judge Gasch, in *United States v. Parrott*, 248 F. Supp., at 202, wrote:

"There are four factors in a speedy trial consideration which appear to be crucial: (1) time involved; (2) who caused the delay; (3) the purposeful aspect of the delay; and (4) prejudice to the defendant.

"The time factor is necessarily determined by the point at which the computation begins. In some circuits, the computation of time does not begin until a formal complaint of indictment has been filed."



After reviewing the cases in this Circuit and concluding that such was not the law, Judge Gasch continued:

"A determination of whether the Sixth Amendment has been violated necessitates a consideration of the entire period between offense and eventual trial. In the instant case, the time period which can be considered as constituting the delay could begin with the date of the first overt act in the indictment. *More logically, however, the computation should begin with the date on which the government considered the defendant's actions to be 'criminal'.*" (Emphasis supplied)

This date must have occurred, at the very latest, in early 1962.

In a determination as to who caused the delay, Judge Gasch wrote, 248 F. Supp., at 203:

"There is no absolute test as to what constitutes purposeful delay. Bad faith or chicanery on the part of the government is not a necessary element. . . . In the instant case, it appears that the government has made a deliberate choice to hold the criminal prosecution in abeyance."

The same conclusion is necessary from the facts in the case at bar.

The question as to whether the defendants must demonstrate some prejudice is a knotty one. Again, Judge Gasch has supplied the answer, 248 F. Supp., at 203:

"*Where the delay is substantial, prejudice may be presumed* and the government bears the burden of showing that no prejudice has resulted." (Footnotes omitted; emphasis supplied)

Similarly, in *Jackson v. United States*, 122 U.S. App. D.C. 124, 125, 351 F. 2d 821 (1965), this Court adopted a similar test:

"In some cases, the length of that delay may be so great that prejudice can be presumed unless the gov-



ernment can show otherwise. See *Hanrahan v. United States*, 121 U.S. App. D.C. 134, 348 F. 2d 365 (1965). But we cannot presume prejudice after a delay of five months. Some showing is necessary.

"This is not to say that prejudice must be proved beyond a reasonable doubt, or even by a preponderance of the evidence. . . . Since the delay was the clear responsibility of the government and was arranged solely for its advantage, the accused should not be forced to labor under an exacting burden of proof, but he must still show a plausible claim."

\* \* \* \* \*

"But unless delay is so long that prejudice can be presumed some evidence of prejudice must be produced."

It is submitted that the delay in this case was long enough to require prejudice to be presumed. Finally, as a unanimous court said in *Hedgepeth v. United States*, U.S. App. D.C. , , 365 F. 2d 684, 487 (1966):

"The possibility of prejudice from the delay is an important factor in close cases. But the very assumption of the Sixth Amendment is that unreasonable delays are by their nature prejudicial. It is not generally necessary for the defendant to demonstrate affirmatively how he has been prejudiced by an unreasonable delay."

##### **5. The Exclusion of Defendants' Exhibit 30 Was Error**

There has been reference made to the civil litigation by which the defendants were ousted from control over the club. *Supra*, p. 11. This was a rule 23, F.R.C.P., class action brought by the then Directors of the Club, D. Ex. 34, T. 2823 on behalf of the club. Upon appointment of the Conservator, Vinton E. Lee, he brought a separate action which was then consolidated with the one already in existence. *Supra*, p. 11.

During the course of this case, the defendants offered (T. 2825) Defendants' Exhibit No. 30, an agreement signed

by all three defendants on behalf of themselves, signed by Lakewood Management Corp., Country Club Developers, Inc., Golf Contractors, Inc., Lakewood Country Club, Inc., by William A. Hepburn, President, and by Mr. Hepburn, George Estok and Walter Bull, individually, and by the conservator, Vinton E. Lee. Paragraph 4 of this agreement read as follows:

*"4. It is agreed that all sums heretofore disbursed to or for the benefit of Troy V. Post, Jr., Bill M. Allen, Leroy W. Pickett, or any of them, and/or their agents, whether corporate or otherwise, shall be considered to be full and reasonable consideration for any and all services heretofore rendered by them to 'second party' Lakewood Country Club, Inc." (Emphasis supplied)*

The defendants sought to introduce this document, *inter alia*, as a recognition, by representatives of the persons allegedly defrauded, that what the defendants had received was "reasonable compensation" for the services rendered by them in putting the Club together (T. 2828). The Court's exclusion is asserted as error (T. 2864).

At the outset, it must be conceded that the defendants in a mail fraud case are entitled to produce what has been referred to as evidence of satisfied customers. Judge Sirica recognized this on the remand in *United States v. Hanrahan*, 255 F. Supp. 957, 969 (D.D. C. 1966), by saying:

*"Certainly any favorable testimony of satisfied clients would have been relevant to the allegations of a scheme to defraud."*

And that, of course, is the law. As long ago as *Worthington v. United States*, 64 F.2d 936, 940 (7th Cir. 1933), this was recognized:

*"From such evidence the government argued that appellant had devised a scheme to defraud and that it was to be effectuated by his selling this worthless paper to innocent purchasers who paid sums known to appellant to be in excess of the true value of the paper."*

"It was to meet this position of the Government, thus briefly set forth, that appellant offered the testimony of witnesses who purchased other contracts and who received the full amounts due thereon. Such evidence while not conclusively disproving the existence of a fraudulent scheme or purpose on appellant's part, would tend to refute the Government's evidence tending to establish a fraudulent scheme. Ordinarily, evidence of other transactions not connected with the one in question is not admissible to establish or disprove the fraud upon which an action for damages is predicated. But here we have a different issue. It was competent, as stated in *Lefkowitz v. U.S.*, 273 F. 664, 666 (C.C.A. 2.), for both parties to 'show every part and parcel of such business, or the method of conducting it, calculated to shed light upon the intent and purpose of its managers.' "

The Court, in *Worthington*, went on, 64 F.2d, at 941:

"In a mail fraud action such as the one we are considering, a fraudulent scheme is an essential element of the crime. While Federal authority is exercised because of the use of the mails by the wrongdoer—namely, the fraudulent scheme—is an essential and often the only controverted issue involved. A fraudulent scheme presupposes a fraudulent intent. A purpose to defraud is necessary before there can be a fraudulent scheme. However, such fraudulent intent or purpose may be shown by contemporaneous acts and action that are tainted with questionable practices. But such practices may be explained by the accused. Likewise, inferences that arise therefrom may be rebutted. If it be shown that the land contracts sold to one purchaser were all bad and of little value and the purchasers made no payments thereon, from which evidence a fraudulent scheme might be inferred, *may not the accused, to dispute the charge, show that others who, about the same time, purchased other land contracts covering lots in the same addition received every payment provided for in such contracts?* The admissibility of such evidence is one thing. Its persuasiveness is quite a different matter." (Emphasis supplied)

The Court reversed a conviction, holding such evidence to have been improperly excluded. More recently, in *United States v. Shavin*, 287 F.2d 647, 652-54 (7th Cir. 1961):

“The defendant offered to prove similar transactions where he submitted true and correct medical bills to these insurance companies in order to show that there was no intent to defraud.”

\* \* \*

“This offer of proof by the defendant was competent in opposition to the proof of the fraudulent scheme and the intent to defraud.”

\* \* \*

“The Government was properly permitted to introduce evidence of similar transactions to prove fraudulent intent, and conversely the defendant should be entitled to negate the fraudulent intent by the evidence which was offered.”

And that in substance is what the defendants proposed by offering Defendants' Exhibit No. 30, the recognition by Hepburn, Estok and Eull (either individually or as representatives of the Club members) that what the defendants had received from Lakewood was “reasonable compensation” for what they had given. We do not suggest, as the Court said in *Worthington*, that this was dispositive. Had we taken this position, what was proffered as Defendants' Exhibit No. 30 would have been utilized as part of a motion to dismiss. What we do say, however, is that it was something which the defendants were entitled to have the jury consider as a “part and parcel” of the evidence. It may be that the government was entitled to some sort of cautionary or limiting instruction, but the defendants were entitled to have this particular evidence considered, in one form or another, by the jury and its exclusion was error.

The trial court's exclusion was premised on *Ecklund v. United States*, 159 F.2d 81, 83-85 (6th Cir. 1947) (T. 2861-

2864). *Ecklund* was premised upon a recognition "that evidence of an effort to compromise is inadmissible." We do not quarrel with that premise, but assert its inapplicability. A compromise offer "does not ordinarily proceed from and imply a specific belief that the adversary's claim is well founded, but rather a belief that the further prosecution of that claim, whether well founded or not, would in any event cause such annoyance as is preferably avoided by the payment of the sum offered. In short, the offer implies merely a desire for peace, not a concession of wrong done." 4 Wigmore, *Evidence* 28 (3d ed. 1940). But when, as here, the compromise has been effected and the instrument of compromise (here, D. Ex. 30) contains an "unconditional and unqualified acknowledgement of liability" it may be considered as probative. *Firestone Tire and Rubber Co. v. Hillow*, 65 A.2d 338, 340 (D.C. Mun. App. 1949); see also *West v. Smith*, 101 U.S. 263, 273 (1879); *Hawthorne v. Eckerson Co.*, 77 F.2d 845, 847 (2d Cir. 1935); *Milton S. Kronheim & Co. v. United States*, 163 F. Supp. 620, 628 (Ct. Cl. 1958). D. Ex. 30 contained such an "acknowledgement" by those then in control of the Club (persons in no way dominated by the defendants) of the value of the defendants' services.

For yet another reason, fairness dictated the admissibility of this document. The fact of the civil litigation, *supra*, p. 11-12, had been shown (T. 2823; D. Ex. 34). The defendants should have been entitled to show its conclusion and the manner thereof. See colloquy at T. 2836, *et seq.* They should have been able to show that their *final* disassociation from the Club was the result of an *agreement*. Failing that, the inescapable inference is that Judge Walsh ordered them out *permanently*. One need only to state this proposition to demonstrate its essential unfairness.

CONCLUSION

For the foregoing reasons, the appellants respectfully assert that their criminal convictions must be set aside and the proceedings as to them remanded to the District Court.

RAYMOND W. BERGAN  
1000 Hill Building  
Washington, D. C. 20006  
*Counsel for Appellants  
Post and Allen*

THOMAS R. DYSON, JR.  
1000 Hill Building  
Washington, D. C. 20006  
*Counsel for Appellant  
Pickett*

*Of Counsel:*

WILLIAMS & CONNOLLY  
1000 Hill Building  
Washington, D. C. 20006

**APPENDIX A**

**Fabulation of Statements Produced Pursuant to  
18 U.S.C. § 3500**





## APPENDIX A

Name of Witness	Government Exhibit No.	Date of Report	T.
Mayor Alexander J. Greene	A		
Edward J. Bacon	B	3/ 7/62	( 259)
Charles S. Peebles	C	2/16/62	( 316)
“ “	D	3/ 5/62	( 317)
Benjamin Feld	E		
Robert A. Bock	F		
Thomas Van Veen			
Robert Vranich			
Paul V. Rogers (None — 515)			
John H. Pardee	G	12/11/61	( 525)
Jack L. Harvey	H	12/11/61	( 567)
Barbara Norton (None — 599)			
Norma R. Matthews	I	12/11/61	( 613)
“ “	J	3/ 5/64	( 614)
“ “	K	(Not indicated in transcript, but apparently a recent FBI statement taken by Special Agent Robert Utz of Alexandria)	
Arthur Garis (None — 641)			
James F. Crowley	L	2/ 9/62	( 657)
Paul H. Hockwalt	M	3/ 7/62	( 681)
Harry A. Calevas (Apparently None)			
Ann Remington (Apparently None)			
William H. Reckert	N	(Apparently undated postal inspector's memorandum.)	

BEST COPY AVAILABLE

from the original bound volume

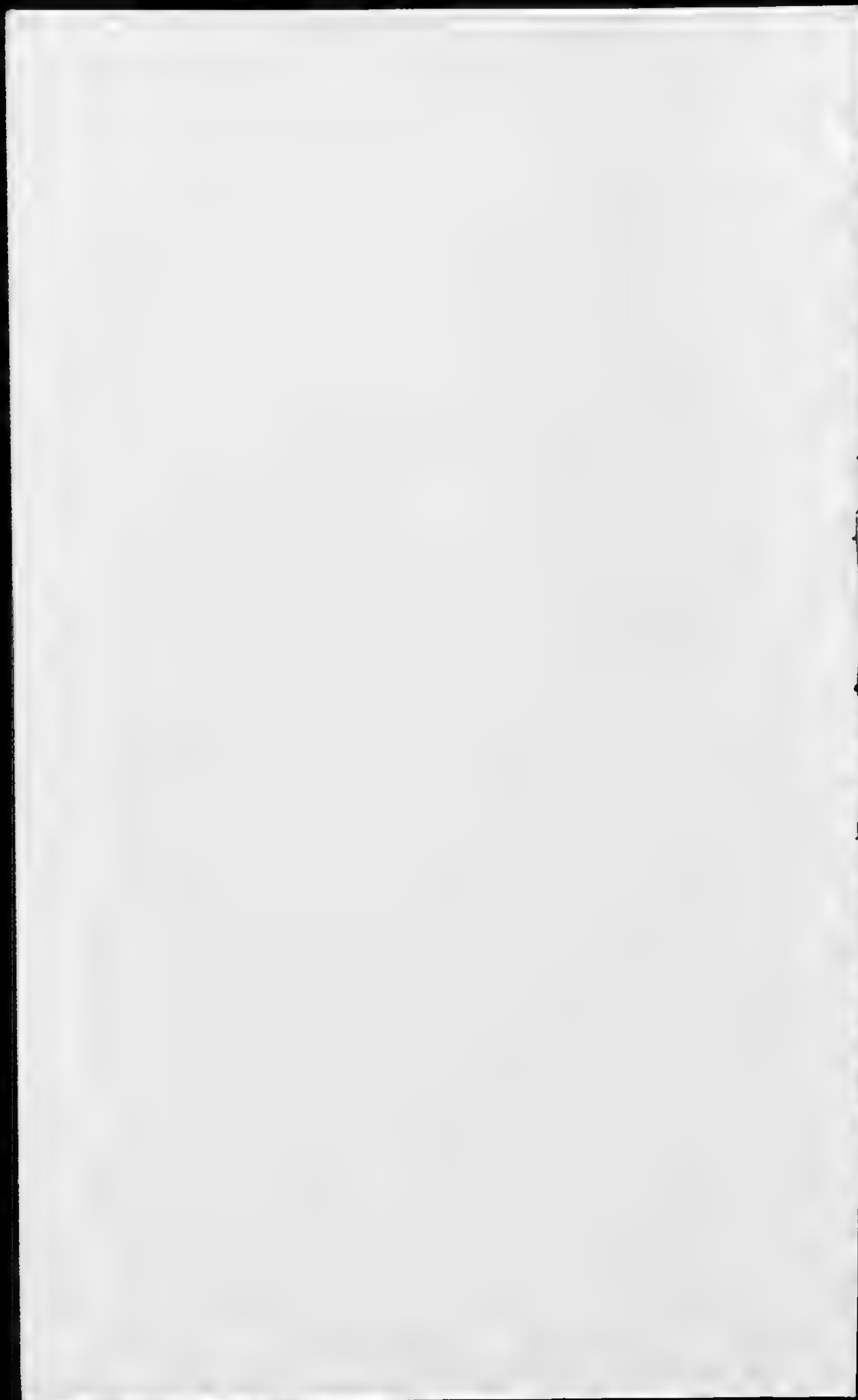
Name of Witness	Government Exhibit No.	Date of Report	T.
Lee Maxfield (None — 763)			
F. Ruskin Winthrop (None — 775)			
James B. Nalle (None — 795)			
John Boothby	O	12/11/61	( 828)
Dr. Sam F. Seeley	P	12/ 6/61	( 850)
“ “	Q	(Postal inspector's report of telephone interview—3/24/64)	( 851)
Walter Rutland (None — 891)			
Barend deVries (None — 910)			
Henry George	R	(Postal inspector's digest of testimony—apparently undated)	( 924)
Frank Quiggin (None — 955)			
Harold A. Timken (Deposition— civil action — 1041)	S	2/23/62	(1042)
William Bradford Shaw (None — 1107)			
Hamilton A. Anderson	T	4/ 6/62	(1115)
“ “	U	9/21/64	(1115)
Daniel Melnick (None — 1152)			
Dr. Mack Louis Parker	V	12/14/61	(1165)
Harry Ator	W	12/ 7/61	(1186)
Marilyn Gould	X	(Undated postal inspector's memorandum of conversation)	(1232)
Robert Elder	Y	8/24/64	(1240)

Name of Witness	Government Exhibit No.	Date of Report	T.
Eugene Hooper (None — 1301)			
Maury Fitzgerald (None — 1320)			
Frank J. Toman	Z	(Undated postal inspector's memorandum)	(1337)
Austin Carlin			
Dorothy O'Neal (None — 1385)			..
Thomas G. Peters (None — 1410)			..
Don Wigley (None — 1427)			..
Walter Shultise (None — 1441)			
William A. Hepburn	AA	7/21/61	(1591)
“ “	BB	8/ 9/61	(1591)
“ “	CC	(Affidavit—civil case) 3/15/61	(1591)
“ “	DD	(Loewy interview notes) 5/10/66	(1591)
James J. Hickey			
Joseph P. Kost	EE	4/ /62 (Date illegible)	(1783)
Jinx Dobbins	FF	2/27/62	(1797)
Frank C. Feise (Apparently None — 1944)			
Roy L. Leinster	GG	9/ 6/61	(2003)
“ “	HH	3/ 7/62	(2003)
“ “	II	(Internal Revenue affidavit re Pickett) 8/ 6/63	(2004)
“ “	JJ	(Internal Revenue affidavit re Pickett) 7/ 6/64	(2004)

Name of Witness	Government Exhibit No.	Date of Report	T.
" "	KK	(Internal Revenue statement re Allen) 8/ 8/63	(2004)
" "	LL	(Internal Revenue statement re Allen) 7/ 9/64	(2005)
Rev. Thomas H. Duffy (None — 2144)			
Donald Brenner	MM	3/30/62	(2231)
" "	NN	6/21/61	(2237)
" "	OO	(Affidavit—civil case) 5/ 4/61	(2238)
" "	PP	(Internal Revenue affidavit) 11/ 9/64	(2238)
Eugene N. Hooper	QQ	(Undated statement)	

## **APPENDIX B**

**Supplemental Instruction of District Judge Charles H.  
Tenney in United States v. Jeremiah J. Kelley, 65  
Cir. 256, U.S.D.C., S.D.N.Y., 4/25/61, T. 651-653**



THE COURT: The Court has received a note from the foreman stating that "We, the jury, are deadlocked on each of the four counts."

Well, Mr. Foreman, ladies and gentlemen, you have all paid close attention to the testimony and I am sure that you have been most conscientious in your deliberations. I am also sure that you followed my instructions and that each of you has listened with care and has given due consideration to the views and arguments of your fellow jurors who hold viewpoints different from your own as to what the proper verdict should be.

As you may know, if you fail to agree on a verdict, the case must be retried, and any future jury must be selected in the same manner and from the same source as you have been chosen, and there is no reason to believe that the case would ever be submitted to 12 men or women any more competent to decide it or that the case can be tried any better or more exhaustively than it has been here, or that more or clearer evidence could be produced on behalf of either side.

The court has no right to force you to reach a verdict. I want to emphasize that. Even if I had that right, I would not exercise it, for I believe firmly that a case tried before a jury should be decided by the jury and that the jury should not be coerced by the court to reach a verdict. I do not know how you stand and I am not going to ask you how you stand. None of you is required to change his or her respective convictions conscientiously held as to the guilt or innocence of the defendant.

However, I ask you to make one further effort to agree among yourselves and I am going to send you back for further deliberations with that end in view. I charged you in the first instance that the verdict must be the verdict of each individual juror and not mere acquiescence in the conclusions of anyone else or in the views of the majority.

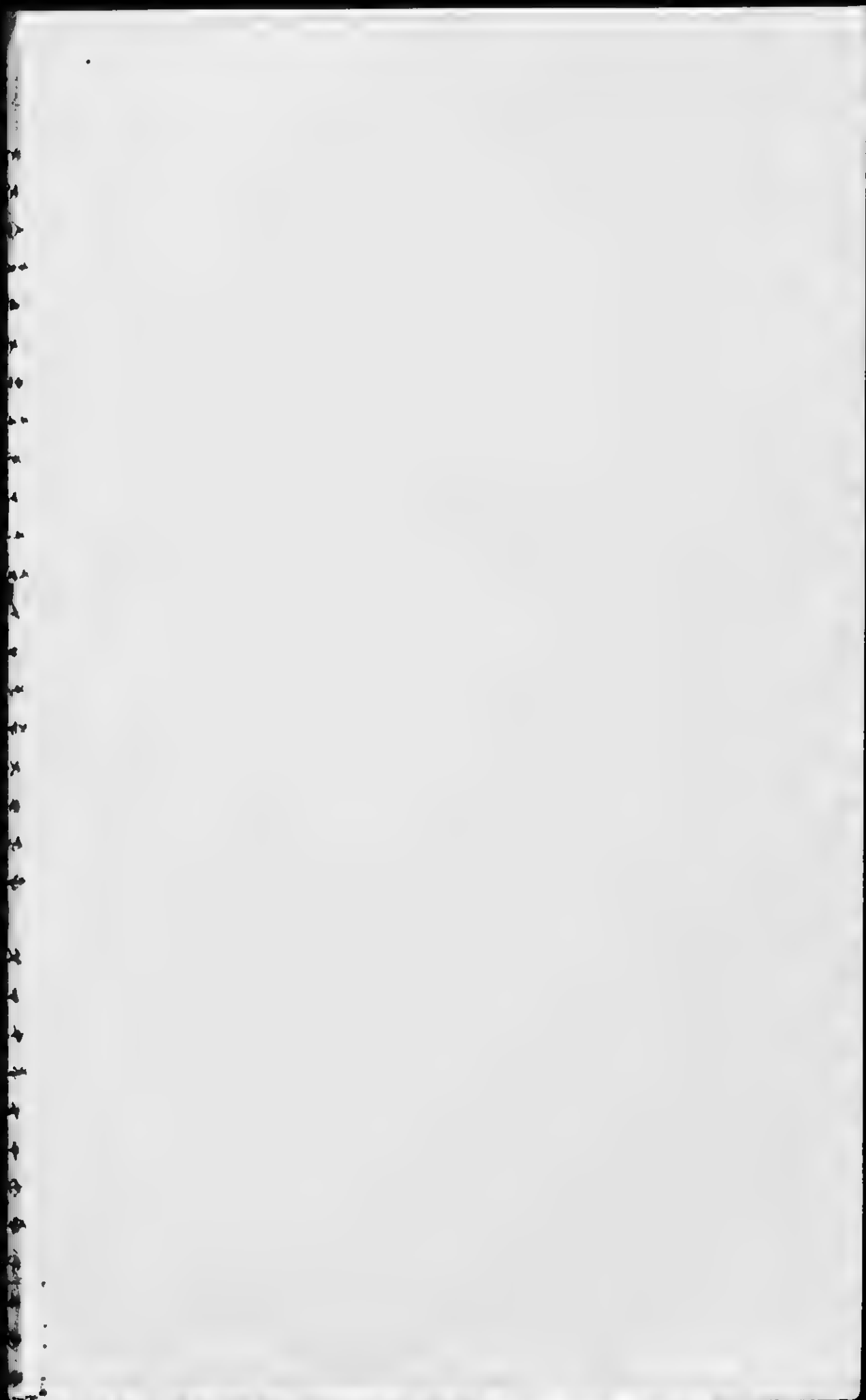
I want you to reexamine the evidence in this case thoroughly among yourselves with complete candor and frankness and with full and proper regard and deference for the opinions of one another. In doing so, you should give due weight and consideration to the respective arguments supporting each of the different points of view here.

I put it to you this way: You should, each of you, with your different points of view, listen with a disposition to be convinced of the other side's arguments, and that applies to both points of view. Whether such a reexamination will convince any of you that the position which you have taken up to now should be changed, I do not know. But it is your duty to decide this case one way or the other if you feel you can conscientiously do so within the framework of what I have just told you.

If, in reconsidering the case, you find that you have reached a verdict either one way or the other, or find that you are still in disagreement which it is impossible to resolve, then please let me know.

So I will ask you to return to your deliberations with the foregoing instructions in mind. Thank you very much.





**BRIEF FOR APPELLEE**

---

**United States Court of Appeals  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

---

**No. 20861**

---

**TROY V. POST, JR., APPELLANT**

*v.*

**UNITED STATES OF AMERICA, APPELLEE**

---

**No. 20862**

---

**BILL M. ALLEN, APPELLANT**

*v.*

**UNITED STATES OF AMERICA, APPELLEE**

---

**No. 20863**

---

**LEROY W. PICKETT, APPELLANT**

*v.*

**UNITED STATES OF AMERICA, APPELLEE**

---

**Appeal from the United States District Court  
United States Court of Appeals  
for the District of Columbia**

**FILED SEP 21 1967**

**DAVID G. BRESS,  
United States Attorney.**

*Nathan J. Paulson*  
CLERK

**Of Counsel:**

**ROGER A. PAULEY, Attorney  
Department of Justice**

**FRANK Q. NEBEKER,  
Assistant United States Attorney.**

---

### QUESTIONS PRESENTED

In the opinion of appellee, the following questions are presented:

1. Whether, in a mail fraud prosecution where the defense was good faith, the trial judge properly excluded three items of evidence proffered by appellants as allegedly bearing upon good faith.

2. Whether the court erred in instructing that the appellants, if found to be "promoters" of the Lakewood Country Club, owed a fiduciary duty to its members, a knowing or intentional breach of which would be an act of fraud.

3. Whether, in the circumstances of the case, the giving of the "*Allen*" charge by the trial judge was justified and its form proper.

4. Whether appellants' motion to dismiss the indictment for want of timely prosecution was properly denied.

## INDEX

	Page
Counterstatement of the case .....	1
Summary of Argument .....	7
Argument:	
I. The exclusion of three items of evidence proffered by appellants to show good faith was justified .....	9
II. The "promoter" instruction given by the court was proper .....	15
III. There was no error in the giving of the "Allen" charge or in its form .....	20
IV. Appellants' motion to dismiss the indictment because of lack of timely prosecution was properly denied .....	23
Conclusion .....	25

## TABLE OF CASES

<i>Allen v. United States</i> , 164 U.S. 492 (1892) .....	20
<i>Commonwealth v. Tuey</i> , 8 Cush. (Mass.) 1 (1851) .....	20
<i>Corey v. United States</i> , 346 F.2d 65 (1st Cir.), <i>cert. denied</i> , 382 U.S. 911 (1965) .....	13
<i>Dickerman v. Northern Trust Co.</i> , 176 U.S. 181 (1900) .....	17
<i>Epstein v. United States</i> , 174 F.2d 754 (6th Cir. 1949) .....	20
<i>Firestone Tire &amp; Rubber Co. v. Hillow</i> , 65 A. 2d 338 (D.C. Mun. Ct. App. 1949) .....	15
* <i>Fulwood v. United States</i> , — U.S. App. D.C. —, 369 F.2d 960 (1966), <i>cert. denied</i> , 87 S. Ct. 2058 (1967) .....	8, 22
<i>Hanrahan v. United States</i> , 121 U.S. App. D.C. 134, 348 F.2d 365 (1965) .....	24
<i>Milton S. Kronheim &amp; Co. v. United States</i> , 163 F. Supp. 620 (Ct. Cl. 1958) .....	15
<i>Lakewood Country Club, Inc. et al. v. Troy V. Post, et al.</i> , Civil No. 806-61 .....	6
<i>Vinton E. Lee, et al. v. Troy V. Post, et al.</i> , Civil No. 1157-61 .....	7
<i>Shushan v. United States</i> , 117 F.2d 110 (5th Cir. 1940), <i>cert. denied</i> , 313 U.S. 574 (1941) .....	18
* <i>Tynan v. United States</i> , — U.S. App. D.C. —, 376 F.2d 761 (1967) .....	8, 24
<i>United States v. Buckner</i> , 108 F.2d 921 (2d Cir.), <i>cert. denied</i> , 309 U.S. 669 (1940) .....	18
<i>United States v. Groves</i> , 122 F.2d 87 (2d Cir.), <i>cert. denied</i> , 314 U.S. 670 (1941) .....	18

## II

Cases—Continued	Page
<i>United States v. Hoffa</i> , 205 F. Supp. 910 (S.D. Fla.), <i>cert. denied</i> , 371 U.S. 892 (1962) .....	18, 19
* <i>United States v. Simmons</i> , 338 F.2d 804 (2d Cir. 1964), <i>cert. denied</i> , 380 U.S. 983 (1965) .....	24
<i>West v. Smith</i> , 101 U.S. 263 (1879) .....	15
<i>Williams v. United States</i> , 119 U.S. App. D.C. 190, 338 F.2d 530 (1964) .....	22, 23

### OTHER REFERENCES

18 U.S.C. 371 .....	2
18 U.S.C. 1341 .....	2
BALLANTINE, MANUAL OF CORPORATION LAW AND PRACTICE, §§ 45, 49 .....	17

---

\*Cases chiefly relied upon are marked by asterisks.

# **United States Court of Appeals**

**FOR THE DISTRICT OF COLUMBIA CIRCUIT**

---

**No. 20861**

---

**TROY V. POST, JR., APPELLANT**

*v.*

**UNITED STATES OF AMERICA, APPELLEE**

---

**No. 20862**

---

**BILL M. ALLEN, APPELLANT**

*v.*

**UNITED STATES OF AMERICA, APPELLEE**

---

**No. 20863**

---

**LEROY W. PICKETT, APPELLANT**

*v.*

**UNITED STATES OF AMERICA, APPELLEE**

---

**Appeal from the United States District Court  
for the District of Columbia**

---

**BRIEF FOR APPELLEE**

---

**(1)**

## COUNTERSTATEMENT OF THE CASE

On June 23, 1964, appellants were indicted in the District of Columbia for conspiracy and nineteen counts of mail fraud (18 U.S.C. §§ 371, 1341) arising from their promotion and sale of memberships in the Lakewood Country Club in Rockville, Maryland. After a jury trial before District Judge Jones, appellants were convicted on the conspiracy count and twelve substantive counts.<sup>1</sup> On January 6, 1967, appellant Post was sentenced to concurrent terms of sixteen to forty-eight months' imprisonment, of which six months was directed to be served, and appellants Allen and Pickett were sentenced to concurrent terms of twelve to thirty-six months imprisonment, of which the court directed four months to be served. Each appellant was also placed on five years' probation, to run concurrently with the prison terms imposed.

Appellants do not challenge the sufficiency of the evidence adduced at their trial, which lasted thirty-four days, required more than 4200 pages to record, and involved the introduction of scores of exhibits by each side. Appellee will thus attempt here only to present a synopsis of the salient aspects of the scheme, leaving to the Argument the recital of such other pertinent facts as are necessary to a discussion of the particular points raised by appellants.

Appellants Post and Allen first conceived the plan of promoting a golf club in the Washington, D. C. area in the summer of 1958 when they were employed by the Sam Snead School of Golf selling franchises for that company's method of golf instruction in the Eastern United States. In October of that year, when they contemplated the search for a suitable site, they enlisted the aid of appellant Pickett, who had a background in the real estate business in the Washington, D. C. vicinity (J.A. 114-16). Appellants then contacted Messrs. Free-

---

<sup>1</sup> At the close of the government's evidence, three counts were dismissed or withdrawn. The jury acquitted the defendants on four counts.

land and Hayes, who had had experience in operating golf clubs in Texas (J.A. 181-83).

Appellants located a suitable piece of land in Montgomery County and in April 1959 secured an option to lease and to purchase it (J.A. 122; D. Ex. 223). On June 9, 1959, they entered an agreement with Freeland and Hayes whereby, in exchange for their assistance, appellants agreed to pay them, *inter alia*, ten percent of the membership fees ultimately received by the club (J.A. 130-33, 184). A zoning exception was obtained in early July 1959 to permit the use of the land as a country club. Following this, appellants organized four corporations to be utilized in operating the club: P.A.P., Inc., Lakewood Management Corporation, Country Club Developers, Inc., and Lakewood Country Club, Inc. (J.A. 45, 130; Gov. Ex. 92-95).<sup>2</sup> According to appellants, the companies were formed for the following purposes: P.A.P., Inc., was to lease the club property (after taking an assignment of the option to lease agreement) and to sub-lease it to the club; Lakewood Management Corporation was to manage the club; Country Club Developers, Inc., was to be the principal contractor for construction of the club facilities; and Lakewood Country Club, Inc., a "non-stock, non-profit" corporation, "no part of the net earnings [of which] shall enure to the benefit of any director or member," was to be the sub-lessee of the club property and was to obtain a county liquor license (J.A. 48, 137-38). Three friends of appellants were named as directors of Lakewood Country Club and appellants themselves were sole directors of the other corporations (J.A. 46-47). At a meeting in July 1959 when the three men were asked by appellants to become officer-directors of Lakewood Country Club, appellants made it clear that their duties would be negligible and that appellants would run the club (J.A. 138-39).

---

<sup>2</sup> Three of the corporations were organized under the law of Maryland. Country Club Developers, Inc., was organized in the District of Columbia.



Meanwhile appellants notified several well known politicians, businessmen and sportsmen of their intent to establish the Lakewood Country Club in Maryland, and secured the consent of such men to lend their names to the venture by becoming members of a non-functional "advisory board" for the club. On July 26, 1959, appellants commenced a membership campaign for the club by publishing advertisements in local and Washington, D. C. newspapers offering a "limited number" of life memberships at a cost of approximately \$1000, which memberships would not have any further dues or assessments. Regular memberships, which would be liable to monthly dues payments, were offered at \$300 plus tax. Many thousand circular letters containing similar representations and information about the proposed club were sent to persons in the Washington, D. C. and Montgomery County areas (J.A. 35-9, 59-60). The promotional literature did not disclose appellants' names but appeared under the apparent auspices of the advisory board, whose members were listed (J.A. 33, 39-40). A sales office was opened by appellants in Bethesda and a sales staff hired. Thereafter, over the course of twenty months, approximately 1800 memberships were sold. Prospective applicants were shown color photographs of country clubs in Texas which Freeland and Hayes operated and were told that Lakewood Country Club would be modeled after those clubs. Applicants for life memberships were informed that the ratio of life members to others would be about one to ten and that the total number of life members would not exceed a specified figure, varyingly set at 150, 200, 250, or 300. Each of the appellants personally so informed at least one life member (*e.g.* J.A. 42-3, 48-9, 56-7, 63-4, 69-70). By the middle of August 1959, the number of life members had already reached 250 and, by January 1, 1960, had surpassed 800 (J.A. 102-03). On October 1, 1960, when sales of memberships had virtually ceased, there were more than 1100 life members as compared with only 719 regular members (J.A. 103). Moreover, despite the fact that some

life membership applicants were told that there would be no minimum spending requirement, the by-laws of Lakewood Country Club, when distributed subsequently, provided authority (albeit never invoked) to impose a minimum spending requirement (J.A. 90, 172-73). Total receipts to Lakewood Country Club from membership fees over the period to March 31, 1961, amounted to one and a half million dollars (J.A. 109, 267).

While the sale of memberships was proceeding, appellants entered into a series of agreements connected with the construction of the Lakewood Country Club facilities. The typical mode was for Country Club Developers, Inc. to contract with Lakewood Country Club, Inc. to perform a service at an inflated price. Country Club Developers would then subcontract the work to an outside contractor at reduced cost, enabling the former company to show a substantial profit. Examples of such arrangements occurred with respect to the clubhouse (price to Lakewood \$625,000; to Country Club Developers \$543,000), the golf course (price to Lakewood \$245,000; to Country Club Developers \$165,000), and the tennis courts (price to Lakewood \$43,500; to Country Club Developers \$16,000), among others (J.A. 104-05). A similar intracorporate arrangement covered the lease of the country club land. On September 1, 1959, P.A.P., Inc., contracted to lease the property for the club for fifty years at an annual rental of \$15,000 with an option to buy (G. Ex. 165). P.A.P., Inc., then sub-leased the property to Lakewood Country Club at an annual cost of \$60,000, the term of the sub-lease being three years (J.A. 98; G. Ex. 37).

The evidence also showed that appellants personally received more than \$203,000 from sales commissions, advisory fees, and salaries pursuant to intracorporate contracts (J.A. 106-07; 312). In addition, they advanced substantial sums of money received from Lakewood membership fees to various country club enterprises in the Eastern United States in which they had an interest. These sums included \$63,000 advanced to a Texas company which they owned, Golf Contractors, Inc., for the

purpose of constructing a golf course in Texas for the Glen Haven Country Club which Freeland and Hayes controlled (J.A. 107-08; 313).

In the fall of 1960 construction on the clubhouse ceased because of lack of funds to pay the contractor (J.A. 178-79).<sup>3</sup> A group of members attempted to ascertain the causes of the work stoppage and to learn from appellants the facts concerning agreements entered into by the Lakewood corporation and the number of regular and life memberships which had been sold. A petition requesting this information was sent to appellant Post in early December but remained unanswered for several weeks (J.A. 71-2). On December 27, 1960, at a membership meeting called to elect directors of Lakewood Country Club, the nominees proposed by appellants were overwhelmingly defeated and a group composed of Lakewood members was elected as the new board (J.A. 72-8). The new board endeavored in the period from January to March 1961 to reach an understanding with appellants with regard to securing financing for the completion of the clubhouse, but the negotiations were unsuccessful. When, by March 15, 1961, appellants had not succeeded in obtaining new financing and appeared to give no firm hope of ever doing so, the board filed on behalf of Lakewood Country Club a lawsuit in the United States District Court for the District of Columbia seeking the appointment of a conservator to manage the club, the ouster of the appellants and the return of monies claimed to have been wrongfully diverted by them. On March 31, 1961, District Judge Walsh appointed Vinton E. Lee, a lawyer and certified public accountant, conservator of all corporations connected with Lakewood Country Club and barred appellants from further operation of the club. See *Lakewood Country Club, Inc. et al. v. Troy V. Post, et al.*,

---

<sup>3</sup> The golf course and swimming pools had been completed and were operating. There was testimony that all facilities could "easily" have been built "for the amount of money collected [by appellants] in the first few months of the membership campaign" (J.A. 192-93).

Civil No. 806-61; *Vinton E. Lee, et al. v. Troy V. Post, et al.*, Civil No. 1157-61.<sup>4</sup> Thereafter, in February 1962, the lawsuit against appellants was settled by consent order under terms whereby appellants surrendered all interests in the Lakewood Country Club and related organizations in exchange for a general release from civil liability arising from their management of the club.

## SUMMARY OF ARGUMENT

### I

The exclusion by the trial judge of three items of evidence proffered in support of the defense of good faith was not based on any concept of a cut-off date fixed by the appointment of a conservator. The evidence was rejected because it did not tend to show good faith in appellants' dealings with the members of the Lakewood Country Club on which the charges of the indictment were based. Moreover, the consent order by which a prior civil action commenced by the members against appellants was settled was properly ruled inadmissible since the consent order expressly recited that it was made for the purpose of compromising the pending lawsuit. Thus any provision it contained concerning appellants' non-liability to the members would not be admissible to show appellants' lack of fraudulent dealings with the membership.

### II

The instruction that, as promoters, appellants had a fiduciary relationship to the members of the corporation was properly given by the trial judge. From the evidence the jury would have been justified in finding that appellants were promoters of the Lakewood Country Club. The mere fact that the club was a non-stock corporation did not render the promoter concept inapplicable, since there is no rational basis for distinguishing between a

<sup>4</sup> This action, instituted by the conservator after his appointment, was consolidated with Civil No. 806-61.

promoter's fiduciary duty to a stock investor and his duty to one advancing money for other than monetary gain. The instruction as given did not detract from the government's burden of proof. The jury were told that they would have to find that a breach of appellants' duty to Lakewood members occurred "intentionally" or "knowingly" in order to find such breach to have been an act of fraud under the mail fraud statute.

### III

The "Allen" charge, given by the trial judge after the jury declared itself deadlocked, was justified and its form was not coercive. Considering the length of the trial and the relatively brief time which the jury had been deliberating, the court was warranted in giving the standard form of instruction, approved recently by this court in *Fulwood v. United States*, — U.S. App. D.C. —, 369 F. 2d 960 (1966), *cert. denied*, 87 S.Ct. 2058 (1967), designed to encourage the jury to make a final effort to reach a decision.

### IV.

Appellants' motions to dismiss the indictment for lack of timely prosecution were properly denied. Even assuming an unwarranted delay by the government in seeking an indictment, appellants in this mail fraud case were not prejudiced thereby. As in *Tynan v. United States*, — U.S. App. D.C. —, 376 F. 2d 761 (1967), in which a similar claim was rejected, no witnesses or other evidence were rendered unavailable by the passage of time, nor do appellants here even make any claim of personal inconvenience resulting from the delay. Absent a showing of prejudice, it is well settled that an indictment filed within the applicable statute of limitations should not be dismissed because of delay in bringing the charges after the offense is known.

## ARGUMENT

### **I. The exclusion of three items of evidence proffered by appellants to show good faith was justified.**

Appellants relied upon a claim of good faith. During the presentation of their case, appellants sought to introduce three items of evidence which they claimed supported such defense. The items were (1) the Lockwood proposal in September 1961 to obtain additional financing; (2) the return, on May 16, 1962, of \$82,000 through Golf Contractors, Inc. to the conservator of Lakewood Country Club; and (3) the consent order in 1962 by which the civil actions filed against appellants were concluded. The offer with respect to each of these items was rejected. Appellants, seizing upon the fact that each of the three items related to a date *after* March 31, 1961, when the conspiracy terminated by appointment of the conservator,<sup>5</sup> endeavor to characterize the exclusion of these items as pursuant to a policy of the judge to establish March 31, 1961, as an "arbitrary cutoff date" (App. Br. 14, 17) for the receipt of evidence. The trial judge, however, did not rest on such a concept in excluding the three challenged items. He did find relevant in some of the instances the fact that the proffers related to events postdating the conservator's appointment, but, as we show below, his exclusion of the items in each case was justified on the grounds that it was not material to the issue of appellants' good faith.

#### ***A. The Lockwood Proposal***

As part of their attempt to demonstrate good faith, appellants introduced evidence that for some months prior to and some time after the appointment of a conservator for Lakewood Country Club, they endeavored (albeit without success) to obtain additional financing for the

---

<sup>5</sup> The trial court, in a supplemental instruction, charged the jury that a conspiracy could not be found to exist after March 31, 1961 (J.A. 299).

club through various proposals under which their interest in the Lakewood complex would be transferred to another body or group of investors who would then complete construction of the clubhouse (see J.A. 222-5, 230-34—the Snead-Nixon proposal; J.A. 87-90—appellants' offer to one Chamberlin; J.A. 179-180, 265-67—appellants' standard form letter to would-be buyers of Lakewood Country Club). There was no objection to this evidence. The government did, however, object to evidence with respect to the Lockwood proposal on the ground that it had no bearing on the issue of good faith. Appellants offered to prove that between May and September 1961 they had negotiated and reached agreement with Lockwood on a proposal whereby he would take over their entire ownership in the Lakewood venture for \$100,000. The agreement was subject to approval of the members of the club and the court and included an offer to the membership itself. Under that offer, members "could either have no dues, with a \$25 minimum spending requirement; or [pay] \$8.50 plus tax [as dues] with no minimum spending requirement" (J.A. 237). The proffer also included the fact that in November 1961, the proposal was rejected by the membership (J.A. 238). The trial judge sustained the prosecutor's objection to the proffer, stating (J.A. 238-39):

I sustain your objection and, for the record, I am doing it for this reason: In the first place, this is at a time subsequent to the takeover by the conservator. Further, the agreement or proposed agreement between Mr. Lockwood and the defendants was conditioned upon a situation or a relationship between members and owners quite unlike what had been set up in the sales to these members, and particularly the life members. Therefore I don't consider this to be a good-faith showing here; or also on feasibility, under the conditions on which the life members came in.

It is clear that, while the judge pointed out, as one relevant factor, that the proffer concerned an event post-



dating the appointment of the conservator, his reason for excluding it was that it did not bear on the good faith of appellants in dealing with the membership at the times in issue. The essence of the charges against appellants was that they concealed from the membership their personal interest and arrangements for personal profit and that they misrepresented both the number and conditions of life memberships which, as marketed by appellants, had as a salient feature exemption from any future "dues or assessments." Obviously the efforts of appellants to salvage something for themselves at a time when they were no longer in control of the club, by means of a proposal requiring the life members to give up their exemption from future charges, would not tend to demonstrate appellants' good faith in dealing with the membership at the time to which the indictment referred.

***B. The Return of Monies to the Conservator through Golf Contractors, Inc.***

Utilizing a corporation known as Golf Contractors, Inc., appellants entered into a complicated transaction with Messrs. Freeland and Hayes to construct a golf course for the Glen Haven Country Club in Texas. Appellants were to receive their costs plus ten percent and fifty percent of the stock in the corporation which operated the Glen Haven club and held the lease on its land. Payment was to be made by a series of promissory notes from the club (guaranteed by Freeland and Hayes) upon the receipt of periodic statements of expenditures from appellants (D. Ex. 306, 307, 309). Golf Contractors, Inc., in turn contracted with Country Club Developers, Inc., (one of the four originally organized Lakewood corporations) for the latter to advance up to \$125,000 to Golf Contractors for the construction. Country Club Developers was to receive six percent annual interest on monies advanced plus fifty percent of all profits (D. Ex. 308). The government's evidence showed that approximately \$63,000 was furnished by Lakewood Country Club



and Country Club Developers, Inc. to Golf Contractors (J.A. 108, 313).

Appellants offered to prove, as bearing on their good faith, that \$82,000<sup>6</sup> was eventually returned to the conservator from the Glen Haven Club on its obligation to Golf Contractors, Inc. The proffer (J.A. 257-61) was to the effect that Glen Haven Country Club had in June 1961 consolidated the series of outstanding notes payable to Golf Contractors, Inc., into one note for more than \$100,000 secured by a lien on the club land. Subsequently the Glen Haven Club was reorganized (changing its name in the process to the Sandy Lakes Country Club) and obtained a loan of \$500,000 from the Southern Title Company. On May 4, 1962, Mr. Vinton Lee, the conservator for the Lakewood organizations,<sup>7</sup> sent a telegram to the Southern Title Company, stating:

We are prepared to forward the note to you at the time of settlement so that you may mark it paid and satisfied and return it to the maker in exchange for a check to Vinton E. Lee, Sequestrator, Sandy Lakes Country Club Mortgage Note.

The balance of the note payable to Golf Contractors, Inc., from Sandy Lakes Country Club is \$82,000. (J.A. 259.)

On May 16, 1962, a check for \$82,000 (part of the \$500,000 loan to Sandy Lakes) was disbursed by the Southern Title Company to Mr. Lee in response to his telegram.

After considerable discussion with counsel, the trial

---

<sup>6</sup> The explanation of how this sum came to be owing is not apparent from the record. There was testimony by defendant Post that Golf Contractors, Inc. incurred expenditures of \$102,000, evidenced by a series of promissory notes totalling that amount from Glen Haven Country Club (J.A. 150-51). Only three promissory notes, totalling approximately \$53,000, were introduced in evidence (D. Ex. 310-312). Assuming appellant Post's figure to be correct, Golf Contractors, Inc. must have received significant additional funds from some source.

<sup>7</sup> Golf Contractors came into the conservatorship in the fall of 1961.

judge excluded the proffered evidence (J.A. 257, 261).<sup>a</sup> This ruling was proper. The proffer would not tend to establish appellants' previous good faith in dealing with the members of Lakewood Country Club, since there was nothing in the proffer to show that appellants played any role in bringing about the return of the money to the conservator. Moreover, introduction of the evidence would have opened a large collateral area<sup>b</sup> not germane to the issues in this case. The government's proof was directed towards showing that appellants utilized certain Lakewood funds for their personal purposes rather than, as such funds should have been used, to build the Lakewood Country Club facilities. For appellants to seek to prove, in effect, that their investment in the Glen Haven Club was a good one, as evidenced by the fact that the money was ultimately returned, would not traverse the government's showing of deliberate improper use by appellants of the money. Such proffer was thus not relevant to the charges against them and did not warrant opening up this collateral issue. Cf. *Corey v. United States*, 346 F. 2d 65, (1st Cir. 1965), *cert. denied*, 382 U.S. 911 (1965).

Appellants further urge (App. Br. 24) that the prosecutor aggravated the situation created by the court's refusal to permit them to show the return of the money when, in closing argument, he referred to the fact that the total "net" sums paid out by appellants to their other clubs, including Golf Contractors, Inc., was \$93,000 (J.A. 288). The record shows that the prosecutor's remark occurred in the context of a lengthy summary of the government's entire financial testimony showing how

---

<sup>a</sup> Although appellants argue that they were again prevented by the imposition of an "arbitrary cutoff date" from showing their good faith (App. Br. 22-24), the record does not reveal that the trial judge relied on the fact that the transaction occurred after commencement of the conservatorship in excluding the evidence (see the court's discussion with counsel at (J.A. 252-57)).

<sup>b</sup> The prosecutor indicated to the judge that, if the evidence went in, he would have to put in a case showing the efforts of the conservator to retrieve the funds and certain alleged acts of the appellants designed to interfere with the conservator's action (J.A. 257).

the million and a half dollars received by appellants from the sale of Lakewood memberships was spent (J.A. 285-89). In this setting, the prosecutor's statement, which did no more than refer to the evidence before the jury, was not prejudicial. A subsequent motion for a mistrial based upon it by appellants was, therefore, properly denied (J.A. 289-290).

### *C. The Consent Order*

Appellants sought during the testimony of appellant Post to introduce the consent order by which the civil litigation brought against them by the Lakewood Country Club and the conservator was terminated (J.A. 152). The government objected and, after considerable discussion with counsel, the court ruled the evidence inadmissible (J.A. 172). The settlement agreement (D. Ex. 30) contained the following paragraph:

4. It is agreed that all sums heretofore disbursed to or for the benefit of [the appellants], or any of them, and/or their agents, whether corporate or otherwise, shall be considered to be full and reasonable consideration for any and all services heretofore rendered by them to . . . Lakewood Country Club, Inc.

Appellants contend that, in accordance with the theory that evidence of satisfied customers is relevant to show lack of fraudulent intent, the offered document should have been admitted (App. Br. 46-49). This argument is, however, predicated upon the faulty premise that the quoted paragraph constituted an independent admission by the members of lack of fraudulent dealings by appellants with them (See App. Br. 49). Such is not the case. The consent order was in the nature of a compromise settlement and mutual release of liability. Paragraph 5 provided:

Nothing in this agreement contained shall ever be construed in evidence as an admission of liability of any character against either party, or any of them,

*the only purpose of this agreement being to prevent further litigation and to secure a release and discharge of all controversies and disputes which might exist between the parties by virtue of the claims asserted, as well as those which might have been asserted, it being understood that this is a contractual agreement and not a mere recital. (Emphasis supplied.)*

The law is clear that in these circumstances the consent order could not be introduced for any inference of prior good faith dealings by appellants arising from the terms of the compromise. *E.g. Milton S. Kronheim & Co. v. United States*, 163 F. Supp. 620, 628 (Ct. Cl. 1958); compare *West v. Smith*, 101 U.S. 263, 273 (1879); *Firestone Tire and Rubber Co. v. Hallow*, 65 A. 2d 338, 340 (D.C. Mun. Ct. App. 1949). As Judge Jones noted (J.A. 172): “. . . there is nothing in this settlement compromise that goes to show that the Lakewood Country Club Board of Directors and . . . all other members of the club were settling by seeing [sic] that there was no wilful violation [by appellants of a criminal statute].”

Appellants also urge that “fairness” dictated admission of the settlement decree in order that they might “show that their *final* disassociation from the Club was the result of an *agreement*” (App. Br. 49). However, on direct examination of appellant Post, their counsel was permitted by Judge Jones to bring out the fact that the members’ lawsuit had been settled and that the settlement ended appellants’ association with the club (J.A. 176-77, 179). Their final disassociation by agreement was thus shown. There was hence no reason to go into the inadmissible and irrelevant details of the consent order.

## II. The “promoter” instruction given by the court was proper.

The trial judge, at the request of the government and over the objection of appellants,<sup>10</sup> charged the jury with

<sup>10</sup> The government’s requested instructions appear at pages 25-26 of appellants’ brief. Before granting (in substance) the govern-

respect to the obligations of the appellants as promoters to the members of the Lakewood Country Club. The instruction given is set forth below (J.A. 290-91):

The jury are instructed that a promoter is a person who sets in motion machinery that brings about the incorporation and organization of a corporation, brings together the persons interested in the enterprise to be conducted by the corporation, aids in inducing persons to become members of the corporation, and in procuring the membership fees to carry out purposes set forth in the corporations articles of incorporation.

If from the evidence in this case the jury should find beyond a reasonable doubt that the defendants were the promoters of Lakewood Country Club, Inc., then you are instructed that the defendants stood in a fiduciary relation to both the corporation as a separate legal entity and the members, including those persons who it was anticipated would make application to and would become members in Lakewood Country Club, Inc. Such a fiduciary relationship on the part of the defendants, should you find them to be promoters of the Lakewood Country Club, Inc., required that they exercise the utmost good faith in their relations with the corporation and the members, including fully advising the corporation and members, and persons who it was to be anticipated would become members, of any interest which the defendants had that would in any way affect the corporation, the members and anticipated members. Such a full disclosure requirement, if you should find the defendants to be promoters, would oblige them to faithfully make known all facts which might have influenced prospective members in deciding whether or not to purchase memberships. And this full disclosure would include the duty to refrain from misrepresenting any material facts, as well as the duty to make known any personal interest the

---

ment's requested charge. Judge Jones held lengthy discussions with counsel and conducted independent research on the matter (J.A. 268-85).

defendants had in any transaction relating to the country club enterprise.

Also you are instructed that if you should find beyond a reasonable doubt that the defendants were promoters of the Lakewood Country Club, Inc., and that the funds obtained by them from members of the club corporation to accomplish the purposes of the corporation were used by them for the club's benefit, they were properly used. On the other hand, if you should find beyond a reasonable doubt that the defendants were the promoters of the club corporation, and that they had intentionally converted those funds to their own personal use, such would be a fraud on the members of the club corporation, since such funds were in the nature of trust funds as to which the defendants had a fiduciary obligation. And in that connection you are further instructed that for promoters to knowingly use their fiduciary position to obtain secret profits at the expense of the corporation or its members would not only be a breach of that fiduciary duty but an act of fraud.

Appellants contend that this instruction was erroneous for the reasons (1) that the promoter concept is inapplicable to a membership, as opposed to a stock, corporation, and (2) that it misallocated the burden of proof in this case.<sup>11</sup>

1. There is no reason why the promoter concept should, as appellants suggest, be held inapplicable to a non-stock corporation. The promoter concept essentially treats promoters, the persons in charge of an enterprise to be formed, as having a status and duty to investors and the enterprise similar to that of directors in a going corporation; i.e., they have a duty to the investors and to the enterprise to use the money for the purposes specified and not to make secret profits. See BALLANTINE, *MANUAL OF CORPORATION LAW AND PRACTICE* §§ 45, 49. Although normally a promoter ceases to be such with the

---

<sup>11</sup> Appellants do not challenge the court's definition of a promoter, which was in accordance with accepted authority. See *Dickerman v. Northern Trust Co.*, 176 U.S. 181 (1900).

formation of the corporation, in instances, as here, where a promoter continues to dominate the corporation even after directors have been appointed, his obligation and status persist. This concept, which rests on a common-sense recognition of the position of a promoter in relation to those he induces to join an enterprise, is just as applicable to those who induce others to part with money for the purpose of a non-profit corporation as to those who promote a venture for profit. The members of the Lakewood Country Club who parted with their money to utilize the club's sports and recreational facilities are as much entitled to have their money used for corporate purposes alone as is the ordinary stock investor who purchases shares from a promoter.

While no case has been discovered in which the promoter concept has been applied outside the context of a stock corporation,<sup>12</sup> such fact, for the reasons stated above, does not appear to us to indicate the inapplicability of the promoter doctrine to non-stock enterprises. It must be remembered that the total number of "promoter" cases is quite small and that the vast majority of corporations are of the "stock" variety. We note that our search likewise failed to uncover any case which purports to declare the promoter concept inapplicable to a non-stock corporation. The cases relied upon by appellants (App. Br. 29-31) to support their proposition that the promoter doctrine is inapplicable to a non-stock corporation hold no more than that promoters of an enterprise owe no duty to investors in the enterprise until they begin to sell shares or equivalent interests. Such cases are clearly inapposite to the issue here whether there is

---

<sup>12</sup> The fiduciary concept has been employed in mail fraud prosecutions in the context of both membership and stock organizations, although not specifically in relation to promoters. *United States v. Groves*, 122 F.2d 87 (2d Cir.), cert. denied, 314 U.S. 670 (1941); *Shushan v. United States*, 117 F.2d 110 (5th Cir. 1940), cert. denied, 313 U.S. 574 (1941); *United States v. Buckner*, 108 F.2d 921 (2d Cir.), cert. denied, 309 U.S. 669 (1940); *United States v. Hoffa*, 205 F. Supp. 910 (S.D. Fla.), cert. denied, 371 U.S. 892 (1962).



a fiduciary relationship of promoters to members of a membership corporation arising *after* the promoters solicit and obtain applications.

Appellants, moreover, were here more than just directors of the corporation, as to whom it is settled law that a fiduciary relationship is owing to the members. See *United States v. Hoffa*, 205 F. Supp. 710, 715-16 (S.D. Fla.), *cert. denied*, 371 U.S. 892 (1962). Rather, in addition to their being the *de facto* directors of the Lakewood Country Club through their complete domination of the dummy directors they designated, appellants were also the owners and creators of the corporation, as well as its managers and occasional salesmen of its membership applications. In these circumstances the court below was fully warranted in instructing the jury that appellants might be found to have a fiduciary obligation to disclose all relevant facts to prospective members and to refrain from obtaining secret profits.

2. The charge given by Judge Jones did not detract from the government's burden of proof in this case. The judge charged in part (J.A. 291):

... [I]f you should find beyond a reasonable doubt that the defendants were the promoters of the club corporation, and that they had *intentionally converted* those funds to their own personal use, such would be a fraud on the members of the club corporation, since such funds were in the nature of trust funds as to which the defendants had a fiduciary obligation. And in that connection you are further instructed that for promoters to *knowingly use* their fiduciary position to obtain secret profits at the expense of the corporation or its members would not only be a breach of that fiduciary duty but an act of fraud. (Emphasis supplied.)

This instruction properly informed the jury that in order to find a violation of the mail fraud statute resulting from appellants' breach of their fiduciary duty to Lakewood Country Club members, the jury must find that the breach occurred through intentional and knowing acts



of the appellants. The instruction was thus in accord with the many cases (*Epstein v. United States*, 174 F. 2d 754 (6th Cir. 1949), and others cited by appellants (App. Br. 31-33)) for the proposition that an actual fraud involving intent is required for conviction under the mail fraud statute.

**III. There was no error in the giving of the "Allen" charge or in its form.**

At about 12:15 p.m. on Thursday, June 16, 1966, the jury retired to consider a verdict and deliberated for five hours before being discharged for the night (J.A. 291-92). The following day the jury reconvened at 1:00 p.m. and deliberated until shortly after 5:00 p.m. when it was released for the weekend, having still not reached a verdict (J.A. 293-96). The jury resumed its deliberations at 9:15 a.m. Monday morning and at 10:40 a.m. requested and obtained a rereading of the charge. At 12:30 p.m. it retired again to consider a verdict (J.A. 297-98). At about 5:00 p.m. Judge Jones received a note from the jury stating that they were deadlocked (J.A. 299). After some discussion with counsel, the judge announced that he was going to give the "Allen" charge (Tr. 4172). He stated that the instruction he would give was based on the charge in *Commonwealth v. Tuey*, 8 Cush. (Mass.) 1 (1851), approved by the Supreme Court in *Allen v. United States*, 164 U.S. 492, 501 (1892). Appellants, who had moved for a mistrial when the court reported to counsel that he had received the jury's note (J.A. 300), objected to the giving of the "Allen" instruction and to its form as proposed by the judge (J.A. 302). Thereafter the court instructed the jury as follows (J.A. 303-04):

The mode provided for deciding question of fact in criminal cases is by a verdict of the jury. In a large proportion of cases, absolute certainty cannot be attained or expected. Although the verdict to which a juror agrees must of course be his own verdict,

the result of his own convictions, and not a mere acquiescence in the conclusion of his fellow jurors; yet in order to bring the minds of 12 jurors to a unanimous result, each juror must examine the question submitted with candor, with a proper regard and deference to the opinions of each other. You should consider that the case must at some time be decided; that you are selected in the same manner and from the same source which any future jury must be; and there is no reason to suppose that the case will ever be submitted to 12 jurors more intelligent, more impartial or more competent to decide it, or that more or clearer evidence will be produced on the one side or the other. With this view, it is your duty to decide the case if you can conscientiously do so.

In conferring together, you ought to pay proper respect to each other's opinions and listen with a disposition to be convinced to each other's arguments. On the one hand, if much the larger number of your panel are for conviction, a dissenting juror should consider whether a doubt in his own mind is a reasonable one, which makes no impression upon the minds of so many jurors equally honest, equally intelligent with himself, and who have heard the same evidence with the same attention and with an equal desire to arrive at the truth and under the sanction of the same oath. And, on the other hand, if a majority are for acquittal, the minority ought to seriously ask themselves whether they may not reasonably and ought not to doubt the correctness of a judgment which is not concurred in by most of those with whom they are associated, and distrust the weight or sufficiency of that evidence which fails to carry conviction to the minds of their fellow jurors.

Tomorrow morning I want you to come back at 9:15, to go back to the jury room and consider this case in the light of these additional observations which I have just given you . . . .

At 9:15 a.m. the next day the jury resumed its deliberations. At 3:15 p.m. it returned a verdict of guilty as to

the conspiracy count and twelve substantive counts, and not guilty as to four substantive counts (Tr. 4186, *et seq.*).

The giving of the "Allen" charge in the circumstances of this case was appropriate. The trial had lasted for thirty-four days over a period of some seven weeks and voluminous evidence had been submitted by both sides. For the case to be retried at some future date would have been a considerable burden to all parties, including the courts, and the court was justified in making a reasonable effort to have the matter decided. Moreover, as the judge noted (Tr. 4171), the jury had been considering the case for only fourteen or fifteen hours when it declared itself deadlocked, which was hardly an excessive period considering the length of the trial and the more than three hundred exhibits available to be read in the jury room.

In *Fulwood v. United States*, — U.S. App. D.C. —, 369 F. 2d 960 (1966), *cert. denied*, 87 U.S. 2058 (1967), this Court recently determined that the "Allen" charge was a "carefully balanced method of reminding jurors of their . . . obligations." 369 F. 2d at 962. Although defendants urge the contrary, there is no occasion here to reexamine that decision which is, as the court pointed out (369 F. 2d at 961-62), in accordance with the views of all the federal circuit courts which have considered the question.

Appellants' contention that the particular charge given by Judge Jones was coercive is likewise unmeritorious. The charge was in all relevant respects indistinguishable from that in *Fulwood*, *supra*, which this Court approved. And as in *Fulwood* (369 F. 2d at 962) the jury was permitted to recess and separate for the night immediately afterwards, thus reducing any possible coercive effect. Judge Jones did not attempt, as did the court in *Williams v. United States*, 119 U.S. App. D.C. 190, 338 F. 2d 530 (1964), to ascertain how the jury stood. Nor did he improvise, as in *Fulwood*, *supra*, an expression of

"hope" that the "jury will be able to decide this matter."<sup>13</sup> 369 F. 2d at 963.

**IV. Appellants' motion to dismiss the indictment because of lack of timely prosecution was properly denied.**

Appellant Pickett filed a pre-trial motion to dismiss the indictment for want of timely prosecution. After a hearing before then Chief Judge McGuire and the subsequent submission by counsel of memoranda, the motion was denied. It was renewed before Judge Jones on the first day of trial and then joined in by appellants Post and Allen. This motion was denied on the basis of Judge McGuire's ruling. Appellants also made a post-verdict motion for dismissal of the indictment on the ground of lack of timely prosecution, which motion was likewise denied by Judge Jones following the submission by counsel of memoranda.

The present indictment was returned on June 23, 1964, by a District of Columbia grand jury. The membership campaign commenced in July, 1959 and the conservator was appointed in March, 1961. In late 1961 and early 1962 the government had unsuccessfully sought to obtain an indictment by a Maryland grand jury which adjourned without taking any action on the matter.

Appellants contend that the government had a "fully prepared case" against them when it sought the Maryland indictment (App. Br. 39) and that the more than two-year period which elapsed before the case was presented to the Washington, D. C. grand jury constituted an unjustified delay. The fact that the Maryland grand jury declined to take any action on the basis of the government's presentation in 1961-1962 indicates that the case against appellants was far from fully prepared at that time. In any event, it is clear that appellants were

---

<sup>13</sup> Unlike the situation in *Williams v. United States*, *supra*, the jury did not almost immediately return with a verdict upon resuming their deliberations but considered the case for several additional hours before reaching a decision. There is thus no reason to believe that the charge was coercive.

not prejudiced by any unwarranted delay which might have occurred in securing the instant indictment. The evidence at trial was largely documentary, consisting of copies of agreements, corporate articles, and financial charts, and would not be affected by the passage of time. No documents were lost or destroyed, nor do appellants claim prejudice from the death or unavailability of any witnesses. Appellants allege no personal hardship resulting from the government's asserted failure to proceed with dispatch.<sup>14</sup> Compare *Hanrahan v. United States*, 121 U.S. App. D.C. 134, 348 F. 2d 365 (1965). In these circumstances, appellants' motions to dismiss the indictment were properly denied, since where an indictment is returned within the applicable period of limitations, mere delay in bringing the charges, after the offense is known, is not in itself a ground for dismissal. *E.g.*, *United States v. Simmons*, 338 F. 2d 804, 806 (2d Cir. 1964), *cert. denied*, 380 U.S. 983 (1965); see *Tynan v. United States*, — U.S. App. D.C. —, 376 F. 2d 761 (1967).<sup>15</sup> Even if the burden of establishing lack of prejudice fell upon the government in this case, the record plainly shows that this burden has been met.

---

<sup>14</sup> Appellants, in passing, point to a compilation (submitted by them as an appendix to their post-trial motion to dismiss the indictment) of "I don't know" or "I don't remember" responses of various witnesses as demonstrating prejudices (App. Br. 43). In all instances, however, the inability of the witnesses at trial to recall related to facts merely tangential to the critical events which formed the basis of the charges and in many cases the unrecollected fact was established by the testimony of other witnesses.

<sup>15</sup> In *Tynan*, *supra*, this Court recently affirmed a district court's finding of no prejudice in the context, as here, of a motion to dismiss a mail fraud indictment.



CONCLUSION

WHEREFORE, it is respectfully submitted that the judgment of the District Court should be affirmed.

DAVID G. BRESS,  
*United States Attorney.*

FRANK Q. NEBEKER,  
*Assistant United States Attorney.*

*Of Counsel:*

ROGER A. PAULEY, *Attorney*  
*Department of Justice*